

THIS ORDER IS NOT A  
PRECEDENT OF THE TTAB

Mailed:  
March 26, 2014

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Lincoln National Corporation

v.

Kent G. Anderson

Opposition No. 91192939  
to application Serial No. 76259991  
filed on October 20, 2000

Opposition No. 91194817  
to application Serial No. 76690134  
filed on May 30, 2008

Jonathan P. Froemel of Barnes & Thornburg LLP for Lincoln  
National Corporation.

Kent G. Anderson, *pro se*.

By the Trademark Trial and Appeal Board:

The final decision on the merits issued in these cases  
on February 21, 2014 is redesignated as a precedent of the  
Trademark Trial and Appeal Board. The order otherwise  
remains unchanged and the time for filing any appeal from  
the decision continues to run from February 21, 2014.

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**UNITED STATES PATENT AND TRADEMARK OFFICE**

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filed on May 30, 2008

Jonathan P. Froemel of Barnes & Thornburg LLP for Lincoln National Corporation.

Kent G. Anderson, *pro se*.

Before Quinn, Grendel and Hightower, Administrative Trademark Judges.

Opinion by Grendel, Administrative Trademark Judge:

**INTRODUCTION.**

The two above-captioned opposition proceedings were consolidated by order of the Board dated September 28,

2012.<sup>1</sup> We shall decide the two oppositions in this single opinion.

On October 20, 2000, Kent G. Anderson ("applicant") filed application Serial No. 76259991 (or the "'991 application") seeking registration on the Principal Register of the mark **FUTURE** (in italic block letters as depicted below)

***FUTURE***

for numerous goods and services now identified and classified in eleven International Classes, including Classes 35 and 36.<sup>2</sup> The identification of services in Class 35 is lengthy, and we shall discuss it later in this opinion. The Class 36 services are identified in the application as:

Banking; brokerage houses in the field of securities, stocks and bonds; insurance agencies in the field of life, accident and health; investment brokerage; commodities trading for others; financial services in the nature of investment security; surety services; financial guarantee and surety; loan financing and credit card services; credit card transaction processing

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<sup>1</sup> Opposition No. 91192939 was designated as the "parent" case, in which all papers submitted after the consolidation order have been entered.

<sup>2</sup> Prosecution of this application, filed on October 20, 2000, was suspended for lengthy periods of time during ex parte examination prior to publication for opposition.

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services; credit card verification; credit recovery and collection; electronic credit card transactions; loan financing; online banking; commercial banking services, namely, savings and checking account services; insurance brokerage services; stock brokerage services; financial consulting services; venture capital funding services to emerging and start-up companies; financial planning and investment advisory services; financial forecasting; leasing of shopping mall space.

This application is based on applicant's allegation of a bona fide intent to use the mark in commerce, under Trademark Act Section 1(b), 15 U.S.C. §1051(b).

On May 30, 2008, applicant filed application Serial No. 76690134 (or the "'134 application"), seeking registration on the Principal Register of the mark **FUTURE** (in block letters as depicted below)

**FUTURE**

for numerous services now identified and classified in eight International Classes, including Class 36. The Class 36 services in this application are the same as those identified in the '991 application, set out above. This '134 application likewise is based on applicant's allegation of a bona fide intent to use the mark in commerce, under Trademark Act Section 1(b).

**Opposition Nos. 91192939 and 91194817 (consolidated)**

In Opposition No. 91192939 (or the "'939 opposition"), Lincoln National Corporation ("opposer") has opposed registration of applicant's mark in application Serial No. 76259991, solely as to Classes 35 and 36. In Opposition No. 91194817 (or the "'817 opposition"), opposer has opposed registration of applicant's mark in application Serial No. 76690134, solely as to Class 36.

In both oppositions, opposer has asserted two grounds of opposition as to the opposed classes in the respective applications.

First, opposer claims that when applicant filed the respective intent-to-use applications, he lacked the requisite Section 1(b) bona fide intent to use the mark in commerce as to the opposed Class 35 and Class 36 services in the '991 application, and as to the Class 36 services in the '134 application, thus rendering each of the applications void *ab initio* as to the opposed classes.

As its second ground of opposition in both oppositions, opposer has asserted a likelihood of confusion claim under Trademark Act Section 2(d), 15 U.S.C. §1052(d), based on its allegation of prior use and registration of the mark "**HELLO FUTURE.**" (registered in standard character form; the concluding period is part of the mark)<sup>3</sup> for various services

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<sup>3</sup> For purposes of clarity we will depict the mark in quotation marks in this opinion, but the quotation marks are not part of the mark per se.

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in Classes 35 and 36.<sup>4</sup> The Class 35 services in opposer's registration are identified as "Record keeping services for 401(a), 401(k), 403(b), 457 and 529 plans and simplified employee pension plans." The Class 36 services are identified in the registration as:

Financial and insurance services, namely life insurance and annuity underwriting services; financial services in the nature of annuity investment; financial and insurance services, namely administration and management of annuity contracts and consultation in the field of developing annuity products for others; financial consultation, namely mutual fund advisory services; mutual fund investment; establishing mutual funds for others; financial planning and investment advisory services; institutional investment management services; investment planning services, namely investment consultation and advice; providing investment and employee benefit programs, namely deferred compensation for private, public and tax exempt employers and their employees; and offering individual retirement accounts for individual retirement.

Applicant answered the notice of opposition in each case by denying the salient allegations thereof.

Opposer took testimony and presented evidence at trial; applicant did not.<sup>5</sup> Both parties filed briefs.<sup>6</sup>

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<sup>4</sup> Reg. No. 3345171, issued on November 27, 2007. Section 8 affidavit accepted; Section 15 affidavit acknowledged.

<sup>5</sup> Applicant submitted voluminous evidence for the first time with his trial brief. As noted in the Board's May 20, 2013 order at n. 1, this evidence is untimely, and we have given it no consideration. See Trademark Rule 2.121(a)(1), 37 C.F.R. §2.121(a)(1).

<sup>6</sup> Applicant's counsel withdrew from representing applicant following the filing of opposer's brief. Applicant then filed his brief *pro se*.

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After careful consideration of the evidence of record and the parties' arguments, and for the reasons discussed below, we decide the two oppositions as follows: we sustain Opposition No. 91192939 as to the opposed Class 35 in application Serial No. 76259991, based solely on opposer's Section 1(b) ground of opposition; we sustain Opposition No. 91192939 as to Class 36 in application Serial No. 76259991, based on both opposer's Section 1(b) and 2(d) grounds of opposition; and we sustain Opposition No. 91194817 as to the opposed Class 36 in application Serial No. 76690134, based on both opposer's Section 1(b) and 2(d) grounds of opposition.

**THE RECORD.**

The record includes the pleadings and, by rule, the files of the opposed applications. Also of record is opposer's April 26, 2012 Notice of Reliance (NOR) and the seventeen exhibits thereto. These exhibits consist of:

-February 15, 2012 testimony deposition (with exhibits) of David Wozniak, opposer's Assistant Vice-President, Head of Advertising (NOR Exh. 1-3);<sup>7</sup>

-TARR printout of opposer's pleaded registration (NOR Exh. 4);

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<sup>7</sup> This testimony deposition should have been submitted separately under Trademark Rule 2.125, rather than under notice of reliance.

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-Various printed publications (NOR Exh. 5);

-March 18, 2011 discovery deposition of applicant (and selected exhibits) (NOR Exh. 6 and 7);

-Applicant's responses to opposer's discovery requests (NOR Exh. 8-11); and

-Various documents from USPTO records, including from prior Board proceedings involving opposer and/or applicant (NOR Exh. 12-17).

**OPPOSER'S BURDEN.**

To prevail in these opposition proceedings, opposer must establish as to each of the proceedings (1) its standing to oppose and (2) at least one statutory ground of opposition to registration of applicant's mark. See *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1844 (Fed. Cir. 2000).

**OPPOSER'S STANDING.**

Opposer has properly made of record its pleaded registration of the mark "HELLO FUTURE.", which establishes that the registration is in effect and is owned by opposer. (Opposer's NOR Exh. 4.) In view thereof, we find that opposer has a real interest in the outcomes of both of these opposition proceedings and thus has a reasonable basis for believing that it would be damaged by the issuance to

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applicant of the registrations applicant seeks. Accordingly, we find that opposer has established its standing to oppose registration of applicant's marks in both oppositions. See *Cunningham v. Laser Golf Corp.*, *supra*. See also *Lipton Industries, Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185 (CCPA 1982).

**OPPOSITION NO. 91192939 TO APPLICATION SERIAL NO. 76259991, CLASSES 35 AND 36.**

We begin with opposer's '939 opposition to registration of applicant's mark in the '991 application. We first shall address opposer's Section 1(b) ground of opposition.

**Opposer's Section 1(b) Claim in the '939 Opposition.**

Our Section 1(b) findings and analysis as to applicant's '991 application are the same or overlapping as to both Class 35 and Class 36. We therefore shall discuss the Section 1(b) ground of opposition as to both classes together.

Opposer has the burden of proving by a preponderance of the evidence that applicant lacked a bona fide intent to use the mark when he filed his application on October 20, 2000. See *Research In Motion Ltd. v. NBOR Corp.*, 92 USPQ2d 1926 (TTAB 2009); *Boston Red Sox Baseball Club LP v. Sherman*, 88 USPQ2d 1581 (TTAB 2008). For the reasons discussed below,

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we find that opposer has satisfied this burden. We therefore find that the '991 application is void *ab initio* as to the opposed Classes 35 and 36.

**Applicant's Identification of Services.**

To recount, in his application Serial No. 76269991, applicant's Class 36 identification of services reads as follows:

Banking; brokerage houses in the field of securities, stocks and bonds; insurance agencies in the field of life, accident and health; investment brokerage; commodities trading for others; financial services in the nature of investment security; surety services; financial guarantee and surety; loan financing and credit card services; credit card transaction processing services; credit card verification; credit recovery and collection; electronic credit card transactions; loan financing; online banking; commercial banking services, namely, savings and checking account services; insurance brokerage services; stock brokerage services; financial consulting services; venture capital funding services to emerging and start-up companies; financial planning and investment advisory services; financial forecasting; leasing of shopping mall space.

In this '991 application, applicant also seeks to register his FUTURE mark for numerous Class 35 services. The Class 35 identification of services as now set forth in the application is exceedingly long, repetitive and confusing, and we will not quote it in full. Instead, we summarize and organize it as follows:

Shopping malls and plazas, strip malls, retail store services, retail outlets, wholesaling, distributorship

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services, computerized on-line retail store services, shop-at-home party services, direct solicitations by sales agents, independent sales representatives, direct response retail services by means of infomercials, interactive television, discount stores, and mail order catalog services, all featuring or being in the fields of:

books; electronic consumer products; toys; technology; medicine; plants; television sets; computers; eyewear; cellphones; household products; beauty products; sporting goods; auto parts and accessories; books; videotapes; movies; pets; appliances; clothing; shoes; furniture; music; jewelry; food; candy; bicycles; cards; party supplies; drugs; chemicals; cosmetics; safety products; tools.

Retail grocery stores; Retail bakery shops; Retail delicatessen services; Retail florist shops; Retail office supply stores; Retail gasoline supply pump services.

Retail dealerships for automobiles, motorcycles, aircraft and watercraft; Distributorships in the fields of automobiles, motorcycles, aircraft and watercraft; Tracking, locating and monitoring of vehicles, maritime vessels and aircraft services.

Exchange services, namely, bartering of goods for others; Online auction services; Auctioneering services; Telephone auctions.

Franchising, namely, offering technical assistance in the establishment and/or operation of restaurants, hotels, amusement parks, airlines, computer stores, shoe stores, clothing stores, technology stores, toy stores, health stores, food and beverage stores.

Business management and business administration for others; Business marketing consulting services; Business networking; Business marketing services; Multi-level marketing business services; Preparing business reports; Payroll preparation; Tax assessment and consultation; Tax preparation; Cost accounting.

Data processing services; Mail sorting; Photocopying; Packaging articles to the order and specification of others; Operation of telephone switchboard and telephone communication centers for others; Telephone answering services; Telephone directory information services.

Advertising services for others; Advertising agencies; Cooperative advertising and marketing services; Advertising services including dissemination of advertising for others; Providing advertising space in a

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periodical; creating corporate logos; Direct mail advertising; Telemarketing; Promoting goods and services of others by providing hypertext links to the web sites of others; Promoting and conducting trade shows in the field of automobile parts; Preparing outdoor advertisements for others; Promoting the goods and services of others through infomercials played on customer point of purchase television monitors in retail stores; Production and distribution of radio and television commercials; Diversified outsourcing in the field of advertising and marketing by sales people networking; Product endorsements, namely, providing consumer product information via the internet; Product merchandising; Product demonstrations; Retail shop window display arrangement services; Processing manufacturer rebates; Preparing mailing lists; Demographic consultation; Opinion polling for business or advertising services.

Physician referrals; Managed care services, namely utilization review and pre-certification services; Medical cost management; Medical referrals; Medical transcription services; Tracking and monitoring insurance compliance.

Theatrical agencies; Talent agencies; Literary agencies; Modeling agencies; Cooperative advertising and marketing of musicians, artists, singers, bands, theatrical performers, athletic actors, and stars; Promoting sports competitions and concerts of others; Personal management services for musical performers, entertainers.

Employment agencies; Employment outplacing services; Organizing and conducting job fairs.

Personal management consultation; Personal Relocation services.

Energy price comparison services.

Estimating contracting work.

Evaluation of standing timber.

Maintaining registry of breeds in the field of dogs and horses.

**The "Bona Fide Intent" Requirement.**

Trademark Act Section 1(b)(1) provides, in pertinent part, that "[a] person who has a bona fide intention, under circumstances showing the good faith of such person, to use

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a trademark in commerce may request registration of its trademark on the principal register..."

It is settled that "... the determination of whether an applicant has a bona fide intention to use the mark in commerce is to be a fair, objective determination based on all the circumstances." *Lane Ltd. v. Jackson International Trading Co.*, 33 USPQ2d 1351, 1357 (TTAB 1994).

The statutory requirement that the applicant must have a bona fide intent to use the mark in commerce at the time the application is filed "must be read in conjunction with the revised definition of 'use in commerce' in Section 45 of the Trademark Act, which the Trademark Law Revision Act of 1988 (TLRA) amended to require that such use be 'in the ordinary course of trade, and not made merely to reserve a right in a mark.'" *Commodore Electronics Ltd. v. CBM Kabushiki Kaisha*, 26 USPQ2d 1503, 1507 (TTAB 1993).

**Applicant Lacked the Requisite Bona Fide Intent.**

First with respect to the issue of bona fide intent, we find that applicant was merely attempting to reserve a general right in his FUTURE mark when he filed his intent-to-use application.

In this regard, when he was asked in his discovery deposition to identify the prospective customers of his services under the FUTURE mark, applicant answered: "The

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world. Every person in the world. I'm trying to do that, but that's for the future plan. That's the passion I've had for so many years. I always put people before myself, and I always want to see that in my lifetime." (Anderson Disc. Depo. at 8.)

Exhibit 1 to applicant's discovery deposition is a printout from applicant's website, futurevisionaries.com, which appears to have been initially created sometime in 2000. Applicant testified about this exhibit: "That's the futurevisionaries.com. I think it was. That's the first time I bought a FUTURE for banks and stuff. I came up with the ideas. It's just in my mind. I saw a bank and I saw people around the world come to me and bring their ideas and share their ideas. That's the passion. That's where it came from. You know, the future." (Anderson Disc. Depo. at 10-11.)

The following are representative excerpts from the website:

I am Kent Anderson, founder and president of Future Enterprises. I am dedicated to our future. I see a more highly advanced world. I am very creative, hold many patents, enjoy inventing, and am a prolific thinker. Leadership value qualities, integrity and my love and fascination with ideas in inventing, and thinking of a futuristic world.

There needs to be forth entity a place [sic] that people can market, test their ideas in any marketing sector focused towards our future. I am in the process of building this corporation, and have spent many years on it.

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This will be a large undertaking, and will provide a huge marketing arena, with many opportunities available. To test and to market, invest in properties to launch new industries, new products, and new services under the name Future.

Our goal is to secure rights globally to the brand FUTURE, to create global opportunities from the brand so that all people can benefit from the brand FUTURE with their ideas and dreams. Global organizations and companies affiliated with brand FUTURE will create global resources and infrastructures that will allow development of new ideas and a means for new industries to be developed. Global benefits will be created for all people.

The global infrastructure built with the brand FUTURE would be able to support their efforts with knowledge and resources. By working together with the brand FUTURE and sharing by licensing ideas and products to each other, each individual will benefit from the brand FUTURE. Companies and individuals will be allowed separately to benefit from the FUTURE brand globally.

We find that applicant's idealistic hopes for forming a futuristic company based on his FUTURE mark,<sup>8</sup> as reflected by the above-quoted excerpts from his testimony and website, do not suffice as the requisite Section 1(b) specific bona

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<sup>8</sup> In addition to his stated hopes for developing his FUTURE mark in the context of a corporation or company, applicant has described his intentions even more broadly in his *pro se* brief, which includes the following excerpts:

The intent of the applicant is to help people globally to have a place to recognize their ideas and place these products and services into the marketplace in a setting such as encompassed in or as a country.

People's ideas are the product with the concept of FUTURE being similar to a country.

Applicant request[s] that the global people FUTURE brand rights and ideas be recognized as a country, and request[s] that global FUTURE COUNTRY be saved as it has every right to survive as a country.

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bona fide intention to use the mark in commerce in connection with the Class 35 and Class 36 services identified in the application. Rather, we find that applicant, in filing the application, was merely attempting to reserve a general right in the mark for potential use on some undetermined goods or services at some indefinite time in the future. See *Saul Zaentz Co. v. Bumb*, 95 USPQ2d 1723, 1728 (TTAB 2010) (applicant's statements that he filed the application for "the opportunity to create something in the future" and to "cover the trademark in lieu of something growing" show intent merely to reserve a right in the mark).

Next, the legislative history pertaining to Section 1(b) supports our finding of no bona fide intent in this case.<sup>9</sup> The TLRA legislative history identifies several examples of objective circumstances which, if proven, "may

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<sup>9</sup> We deem it appropriate in this case to consult the TLRA's legislative history in our analysis and application of the "bona fide intent" requirement set out in Section 1(b). We have expressly done so in many of our prior Section 1(b) cases. See, e.g., *L'Oreal S.A. v. Marcon*, 102 USPQ2d 1434, 1443 (TTAB 2012); *Research In Motion v. NBOR Corp.*, *supra*, 92 USPQ2d at 1931; *Lane Ltd. v. Jackson Int'l Trading Co.*, *supra*; 33 USPQ2d at 1355; and *Commodore Electronics Ltd. v. CBM Kabushiki Kaisha*, *supra*, 26 USPQ2d at 1506-07 (TTAB 1993). Also, quoting from the TLRA legislative history itself (at S. Rep. No. 100-515, 100<sup>th</sup> Cong. 2d Sess. at 24 (1988)), the Board noted in *Lane Ltd.* that "Congress, in drafting the TLRA, purposely omitted a statutory definition of the term 'bona fide' as used in the phrase 'bona fide intention,' in the interest of preserving 'the flexibility which is vital to the proper operation of the trademark registration system.'" *Lane Ltd.*, *supra*, 33 USPQ2d at 1355. Cf. *Central Garden & Pet Co. v. Doskocil Mfg. Co., Inc.*, 108 USPQ2d 1134, 1148-49 (TTAB 2013) (finding that resort to the legislative history of Trademark Act §10(a)(1) involving assignment of intent-to-use applications is unnecessary and improper given the clear language of the statutory section itself).

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cast doubt on the bona fide nature of the intent or even disprove it entirely." *Lane Ltd., supra*, 33 USPQ2d at 1355, quoting from S. Rep. No. 100-515, 100<sup>th</sup> Cong. 2d Sess., at 23-24 (1988).

Specifically included among the legislative history's examples of an objective circumstance which may cast doubt on or disprove bona fide intent is "an excessive number of intent-to-use applications in relation to the number of products the applicant is likely to introduce under the applied-for marks during the pendency of the applications." *Id.* We find that this example from the TLRA legislative history is present in this case involving applicant's eleven-class application.

Initially, we note that in this case we have only one intent-to-use application, not multiple applications. However, for purposes of the TLRA legislative history regarding an excessive number of intent-to-use applications being an objective circumstance evidencing lack of bona fide intent, we find that applicant's single intent-to-use application, ultimately comprising eleven classes, effectively is the equivalent of eleven separate intent-to-use applications, one for each class. As the Board has previously explained:

An applicant for a trademark registration may file for registration in more than one class by filing a

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single application. See Trademark Rule 2.86. ... Thus, a multiple-class application can be viewed as a series of applications for registration of a mark in connection with goods or services in each class, combined into one application. As a general matter, the filer of such an application is in the same position it would be had it filed several single-class applications instead.

*G & W Laboratories Inc. v. GW Pharma Ltd.*, 89 USPQ2d 1571, 1573-74 (TTAB 2009). See also *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 1101-02, 192 USPQ 24, 28 (CCPA 1976). See also Trademark Manual of Examining Procedure ("TMEP"), § 1403.01 (October 2013).

Our finding that the above-quoted TLRA legislative history supports a finding of no bona fide intent in this case is based on the sheer number and diverse scope of the goods and services identified in applicant's eleven-class application as a whole,<sup>10</sup> and especially the exceedingly

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<sup>10</sup> Applicant's identification of goods and services in his original application included a truly voluminous number and variety of goods and services. Numerous amendments were required and entered throughout prosecution of the application to properly identify and classify the goods and services. These amendments culminated in the present identification of goods and services, which comprises hundreds if not thousands of different goods and services in eleven classes. In addition to the application's Class 36 services and the plethora of Class 35 services as summarized above, the other nine classes in the current identification of goods and services identify goods and services which include: numerous Class 3 cosmetics products; numerous Class 37 services including land development, marine construction, naval ship building, timber logging, and oil well drilling; numerous Class 38 services including radio and television broadcasting, international telephone services, satellite transmission services, audio and video streaming on the internet; Class 39 services including freight transportation by air, rail, ship or truck, leasing of railway cars, and transportation of passengers and goods by air, boat, rail, bus, and space vehicles; Class 40 services including manufacture of cars, vehicles, aircraft, land craft, water craft, space

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broad scope of the Class 35 services in the application (as summarized above). We find it to be highly unlikely that applicant would be able to introduce these services during the pendency of this intent-to-use application.

Applicant argues in his trial brief that even if his original identification of services "in hindsight" was "somewhat ambitious," that should not negate his bona fide intent as of the application filing date as to the specific services identified in the application if taken separately. However, the above-quoted TLRA legislative history provides otherwise, and we find that it specifically supports a finding of no bona fide intent in this case.<sup>11</sup>

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vehicles, furniture and toys; numerous Class 41 services including amusement and theme parks, organizing and providing sports competitions and musical concerts, music composition, television programming distribution, providing educational services at the high school, college and post graduate levels, fireworks displays, fishing guide services, ski resorts, yacht clubs and animal training; numerous Class 42 services including engineering consultation in the fields of buildings, vehicles, space ships and cities for others, pharmaceutical research and production, energy research and aerospace engineering; Class 43 services including a wide range of hotel and hospitality services; and Class 45 services including law enforcement, legal services, registration of domain names and intellectual property licensing.

<sup>11</sup> *Cf. Salacuse v. Ginger Spirits Inc.*, 44 USPQ2d 1415 (TTAB 1997). *Salacuse* was a Section 2(d) cancellation case in which the petitioner's priority claim was based solely on his constructive use date arising from a prior-filed but still-pending intent-to-use application. The Board denied petitioner's summary judgment motion as to priority, finding that if respondent were able to prove at trial its contention that petitioner had also filed multiple other intent-to-use applications to register the mark for numerous goods ranging from food and beverages to luggage to furniture to motor vehicles, that proof would support a finding, based on the TLRA legislative history, that the intent-to-use application upon which petitioner

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Next with respect to the issue of bona fide intent, we find that there is no evidence in the record which would establish that applicant currently has or has ever had the capacity to provide any of the numerous Class 35 and Class 36 services identified in the application.

As background, applicant testified in his discovery deposition that he is an unemployed/self-employed security guard. (Anderson Disc. Depo. at 5-6.) As to his education history, applicant testified that he attended Bismarck (ND) Community College, where he studied criminal justice and took "some business classes." (Id.)

Specifically with respect to the Class 36 financial services identified in his application, applicant has admitted<sup>12</sup> that he is not currently providing such services (Opposer's Requests for Admissions (RFA) Nos. 36-60), and that he has never provided such services in the past (Opposer's RFA Nos. 71-105). He also has admitted that he is not certified or licensed to provide such services by any state, nor is he registered with the SEC as a financial planner. (Opposer's RFA Nos. 1-35, 110-111). Applicant also testified during his discovery deposition that he has

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was solely relying for Section 2(d) priority purposes was void *ab initio* due to lack of bona fide intent.

<sup>12</sup> Opposer's NOR Exh. 9 (Requests for Admissions).

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never been employed by a bank or other type of financial institution. (Anderson Disc. Depo. at 7.)

Also, applicant testified in his discovery deposition:

Q. You yourself, do you have the ability, resources, and knowledge to provide those types of services?

A. No, I don't. Not at this time.

(Anderson Disc. Depo. at 9.) He also testified: "If I had the resources and knowledge, I would sit down and do it myself." (Id. at 17-18.) He also testified:

Q. Now, you had indicated that you are Kent Anderson and are operating as a sole proprietorship. You haven't formed a business entity or a corporation or an LLC to provide these types of financial services?

A. I could never do that. I am just one person, a sole proprietorship. I wanted to merger with the companies, be - even if I could be offered a job. If I had the knowledge, I would be providing these services ...

(Id. at 18.) More generally, applicant also testified: "I don't manufacture products, because I never could find the resources to do that. I've written to companies and countries for years, and the way the financial system is set up, unfortunately, you have to have a house and job to get a loan, and I could never get enough of it ... ." (Id. at 8.)

We find that these admissions by applicant that he himself lacks the capacity to provide the identified Class 35 and Class 36 services support a finding of no bona fide intent. *See, e.g., L'Oreal S.A. v. Marcon, supra*, 102 USPQ2d at 1443 (finding that the applicant's "lack of

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capacity or experience needed to manufacture or otherwise offer his identified goods" supports a finding of no bona fide intent).

Applicant contends, however, that his intention is and has been to license use of the FUTURE mark and/or partner with others who would actually provide the identified services under the mark. He testified, "That's correct. The people that would license those rights would have the resources and knowledge to do that." (Anderson Disc. Depo. at 9.) He also testified, "If I had business partners or investors which I've been seeking out for years and years, I would have those resources." (Id. at 9-10.)

We find that these assertions by applicant of a generalized intention or desire to license the mark or partner with others at some indefinite time in the future do not suffice as a basis for a finding that applicant had the requisite specific bona fide intent to use the mark in commerce in connection with the identified Class 35 and Class 36 services at the time he filed the application. See *L'Oreal S.A. v. Marcon, supra*, 102 USPQ2d at 1443 ("Applicant's very generalized and non-specific reference to licensing and outsourcing as potential strategies to bring the product to the market at an unspecified time in the future" is "woefully deficient in showing a bona fide intent to use the mark").

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Next with respect to the issue of bona fide intent, in his discovery deposition applicant testified as follows regarding his actual efforts and activities undertaken in connection with the FUTURE mark:

I've taken every step I could do. I contacted financial companies. I tried to get a bank loan and stuff. If you're a poor individual in this company [sic - country?], it's an uphill battle, and I am a very poor person. I've been through a lot. My health had been through a lot, and I've done everything a person can do and more for twelve years of my life.

(Anderson Disc. Depo. at 17.) Applicant also testified:

Q. Do you currently have any ongoing business discussions with respect to the Future mark with any large or small companies?

A. I wish I would. Kingdom Holding Companies, Prince Ali, I try to contact to him for the last three or four years. The king of Saudi Arabia, the prince of - you know, that took years out of my life. I don't know whether those are real or not.

Q. Have you actually spoken with those individuals?

A. No, I have not. I sent e-mails and stuff. I got a phone call at one time from a representative from a company to have me verify who I was. He had the resources for all the companies. He owned Citibank. He had companies worldwide. He likes people in countries.

(Id. at 16.) Applicant also testified in his discovery deposition (during examination by his then-counsel):

Q. And you haven't at any time stopped trying to license the goods and services by -

A. No. All the time I e-mail people. I am on LinkedIn, on Network Solutions, I'm on Facebook, Twitter. I've got friends, followers. It's everything on my work. I host a website. You know, I've never stopped.

Q. You haven't abandoned work at any time?

A. No. I'm still fighting and fighting with large financial companies in this country. ... I

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still like to talk to these companies, just run it by them. I'd like to see them in person.

(Id. at 19-20.)

We find that this testimony from applicant regarding his efforts and activities with respect to his FUTURE mark is too non-specific, both as to the actual nature and results of the efforts and activities and as to their timing relative to the application filing date, to provide any significant support for a finding that applicant possessed the requisite bona fide intent to use the mark in connection with the identified Class 35 and Class 36 services.

Finally, we will consider the documentary evidence of record which pertains to the issue of applicant's bona fide intent. This documentary evidence consists of selected exhibits to applicant's discovery deposition, made of record by opposer.<sup>13</sup>

Exhibit 1 to applicant's discovery deposition is the printout from applicant's website setting forth his general intentions and hopes for his FUTURE project, from which we have quoted extensively, above.<sup>14</sup> We find that the content of this website document provides little or no support for a finding of bona fide intent. Indeed, as discussed above, it actually tends to support the opposite conclusion, i.e.,

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<sup>13</sup> Opposer's NOR Exh. 7.

<sup>14</sup> As noted above, this website appears to have been initially created sometime in 2000.

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that at the time applicant filed his application, he was attempting merely to reserve a general right in the mark for future use.

Exhibit 2 to applicant's discovery deposition consists of copies of what appear to be several letters to and from applicant regarding applicant's FUTURE mark.<sup>15</sup> These include what appear to be unsolicited letters from applicant to Ford Motor Company and Ferrari North America seeking their participation in applicant's ideas for his FUTURE project (no responses from those companies are of record), and letters to applicant from Saugatuck Capital Company, Kellogg's, Procter and Gamble and Foundation Orange (a charitable foundation in Paris, France), all of which decline applicant's presumably similar unsolicited letters to them (which are not themselves of record). Applicant testified as to the purpose of the letters, "I was trying to partner up with them. I was trying to merger with the company, with the licenses rights. I didn't have the resources and the contacts. That's why I contacted these people." (Anderson Disc. Depo. at pp. 11-12.)

We find that these letters provide little or no support for applicant's claim of bona fide intent. None of them refers specifically to any of the identified Class 35 or

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<sup>15</sup> These letters appear to be dated variously in 2002, 2004 and 2009.

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Class 36 services at issue in this case, but rather only to applicant's general ideas and hopes for his FUTURE project.

Exhibit 3 to applicant's discovery deposition is applicant's handwritten list of his asserted expenditures in connection with his FUTURE mark and project, apparently prepared sometime in 2011 prior to his discovery deposition. These expenditures total approximately \$4,000, and appear to include undated expenditures for newspaper classified advertisements and undated purchases of internet domain names. We find that this document does not establish that these expenditures pertained specifically to the Class 35 and Class 36 services identified in the application, and that it therefore does not suffice as evidence of bona fide intent for those services.

Exhibit 11 to applicant's discovery deposition includes a number of North Dakota State registration certificates for various FUTURE-formative marks and trade names. Most of these are for "miscellaneous services" or "merchandise not otherwise classified." This exhibit also includes five copyright registration certificates for various drawings. None of these documents refers directly to the Class 35 and Class 36 services identified in applicant's '991 application. We accordingly find that these documents provide little or no support for applicant's claimed bona

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fide intent to use his FUTURE mark on the identified Class 35 and 36 goods as of the application filing date.

Finally, Exhibit 22 to applicant's discovery deposition is an undated classified advertisement placed in a newspaper called "Bull & Bear," as to which applicant in his discovery deposition testified, "It's a financial company. It's a newspaper company," and "They are a leader in the financial industry." (Anderson Disc. Depo. at 14.) The advertisement reads, *inter alia*: "PARTNERS NEEDED for a new huge inc. GLOBAL FUTURE BRANDS," and "Licensing of intellectual property under the FUTURE name." Again, this document does not refer specifically to the Class 35 and Class 36 services identified in the application, and it therefore does not support applicant's claim of bona fide intent as to those services.

In short, we find that the documentary evidence of record provides no significant support for applicant's claim that he had a bona fide intent with respect to the identified Class 35 and Class 36 services when he filed his application. In fact, this lack of documentary evidence supports a finding of no bona fide intent. See *Saul Zaentz Co. v. Bumb, supra*; *Commodore Electronics Ltd., supra*.

As noted above, "... the determination of whether an applicant has a bona fide intention to use the mark in commerce is to be a fair, objective determination based on

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all the circumstances." *Lane Ltd., supra*, 33 USPQ2d at 1355. Having considered all of the evidence of record, and for the reasons discussed above, we find that opposer has carried its burden of establishing that applicant, when he filed the '991 application, lacked the requisite bona fide intent to use the mark on the Class 35 and Class 36 services identified in the application.

**Opposer's Section 1(b) Claim in the '939 Opposition:  
Conclusion.**

Based on these findings, we conclude that the '991 application is void *ab initio* as to the opposed Classes 35 and 36. We accordingly sustain opposer's Section 1(b) ground of opposition to registration of the mark in the '991 application as to those classes.

**Opposer's Section 2(d) Ground of Opposition in the '939  
Opposition as to the '991 Application, Class 36.**

Although we have sustained the '939 opposition as to Class 36 in the '991 application based on Section 1(b), we also shall reach and decide, in this '939 opposition, opposer's Section 2(d) claim against Class 36 in applicant's '991 application.

**Introduction.**

To recount, in his '991 application, applicant seeks to register the mark *FUTURE* (in block italics format) for, in pertinent part, Class 36 services identified in the application as:

Banking; brokerage houses in the field of securities, stocks and bonds; insurance agencies in the field of life, accident and health; investment brokerage; commodities trading for others; financial services in the nature of investment security; surety services; financial guarantee and surety; loan financing and credit card services; credit card transaction processing services; credit card verification; credit recovery and collection; electronic credit card transactions; loan financing; online banking; commercial banking services, namely, savings and checking account services; insurance brokerage services; stock brokerage services; financial consulting services; venture capital funding services to emerging and start-up companies; financial planning and investment advisory services; financial forecasting; leasing of shopping mall space.

Opposer has opposed registration of applicant's mark in Class 36 based on opposer's claim under Section 2(d) that applicant's mark, if used in connection with applicant's identified services, is likely to cause confusion with opposer's mark "HELLO *FUTURE.*", which is registered for, *inter alia*, Class 36 services identified in the registration as:

Financial and insurance services, namely life insurance and annuity underwriting services; financial services in the nature of annuity investment; financial and insurance services, namely administration and management of annuity contracts and consultation in the field of developing annuity products for others; financial consultation, namely mutual fund advisory services; mutual fund

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investment; establishing mutual funds for others; financial planning and investment advisory services; institutional investment management services; investment planning services, namely investment consultation and advice; providing investment and employee benefit programs, namely deferred compensation for private, public and tax exempt employers and their employees; and offering individual retirement accounts for individual retirement.

For the reasons discussed below, we sustain opposer's Section 2(d) ground of opposition as to Class 36 of applicant's '991 application.

**Trademark Act Section 2(d).**

Under Trademark Act Section 2(d), registration of a mark is barred if it "... so resembles a mark registered in the Patent and Trademark Office, or a mark or trade name previously used in the United States by another and not abandoned, as to be likely, when used on or in connection with the goods [or services] of the applicant, to cause confusion, or to cause mistake, or to deceive."

**Section 2(d) Priority.**

Because opposer has made its pleaded registration of record (opposer's NOR Exh. 4), Section 2(d) priority is not at issue in this case as to the mark and the services covered by that registration. See *King Candy Co. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108, 110 (CCPA

1974); *Miss Universe L.P. v. Community Marketing Inc.*, 82 USPQ2d 1562 (TTAB 2007).

**Likelihood of Confusion.**

Our likelihood of confusion determination under Section 2(d) is a legal conclusion, based on an analysis of all of the facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue (the *du Pont* factors). See *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973). See also *M2 Software Inc. v. M2 Communications Inc.*, 450 F.3d 1378, 78 USPQ2d 1944, 1946 (Fed. Cir. 2006); *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005).

In this case, we find that the relevant *du Pont* factors as to which there is evidence of record, in the order we shall discuss them, are the second factor (similarity of the services), the third factor (similarity of trade channels and purchasers), the fourth factor (conditions of purchase), and finally the first factor (similarity of the marks).<sup>16</sup>

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<sup>16</sup> Opposer also has presented voluminous evidence in support of a claim that its mark is famous, for purposes of the fifth *du Pont* factor. However, given our findings under the other relevant *du Pont* factors which clearly suffice to support a conclusion that confusion is likely, see discussion below, we need not also find, nor does opposer need to prove, that opposer's mark is famous. We therefore do not reach the issue of fame.

**Du Pont Factor 2: Similarity of the Services.**

We begin our analysis in this case with the second *du Pont* factor, under which we determine the similarity or dissimilarity of the parties' respective services. In making this determination, we compare applicant's services as they are identified in the application, as quoted above, and opposer's services as they are identified in opposer's pleaded registration, also as quoted above. See *Packard Press Inc. v. Hewlett-Packard Co.*, 227 F.3d 1352, 56 USPQ2d 1351, 1354 (Fed. Cir. 2000).

We find that the parties' respective Class 36 services are similar, and indeed overlapping and thus legally identical in part. Specifically, applicant's broadly-identified "financial consulting services" encompass opposer's services identified as "financial consultation, namely mutual fund advisory services," "financial planning and investment advisory services," and "investment planning services, namely investment consultation and advice." Also, applicant's broadly-identified "investment brokerage" and "stock brokerage" services encompass or at least are highly similar to opposer's services identified as "mutual fund investment," "establishing mutual funds for others," "institutional investment management services," and "offering individual retirement accounts for individual retirement."

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In short, we find that the parties' respective services as identified in applicant's application and in opposer's registration are similar and in part legally identical. This finding under the second *du Pont* factor strongly supports an ultimate conclusion in this case that a likelihood of confusion exists.<sup>17</sup>

***Du Pont* Factor 3: Similarity of Trade Channels and Purchasers.**

Under the third *du Pont* factor, we consider the similarity or dissimilarity of the trade channels in which and the classes of purchasers to whom the parties' services, as they are identified in applicant's application and opposer's registration, are or would be marketed.

Because and to the extent that applicant's services as identified in the application and opposer's services as identified in its registration are similar and in part legally identical (as discussed above), we presume and find

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<sup>17</sup> We have discussed only a few of applicant's identified Class 36 services in finding that the parties' services are similar for purposes of the second *du Pont* factor. Since we are finding likelihood of confusion overall (as discussed below), the opposition will be sustained as to all of the identified Class 36 services, not merely the particular services we have discussed. Under the second *du Pont* factor, opposer need not prove and we need not find similarity as to each and/or all of the different Class 36 services identified in the application in order to sustain the opposition as to all of the identified Class 36 services. See *Tuxedo Monopoly, Inc. v. General Mills Fun Group*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981); *Black & Decker Corp. v. Emerson Electric Co.*, 84 USPQ2d 1482, 1492 n.30 (TTAB 2007); *Baseball America Inc. v. Powerplay Sports Ltd.*, 71 USPQ2d 1844, 1848 n.9 (TTAB 2004).

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that the trade channels and purchasers for the respective services likewise are similar and in part legally identical. See *In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (finding that the Board is entitled to rely on this legal presumption in determining likelihood of confusion); see also *American Lebanese Syrian Associated Charities Inc. v. Child Health Research Institute*, 101 USPQ2d 1022, 1028 (TTAB 2011).

This finding under the third *du Pont* factor supports an ultimate conclusion that a likelihood of confusion exists.

***Du Pont* Factor 4: Conditions of Purchase.**

Under the fourth *du Pont* factor, we consider evidence pertaining to the conditions under which the services are or would be marketed, including the sophistication of purchasers and the degree of care exercised in purchasing the services.

We find that the normal classes of purchasers of the banking, financial planning and investment services involved here would include both ordinary consumers who likely would exercise only a normal degree of care in purchasing the services, as well as somewhat more knowledgeable and sophisticated consumers who perhaps might exercise a greater degree of care in purchasing these services. See, e.g., *Amalgamated Bank of New York v. Amalgamated Trust & Savings*

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*Bank*, 842 F.2d 1270, 6 USPQ2d 1305, 1308 (Fed. Cir. 1988); *In re First USA Realty Professionals Inc.*, 84 USPQ2d 1581, 1587 (TTAB 2007); *Crocker Nat'l Bank v. Canadian Imperial Bank of Commerce*, 228 USPQ 689, 690 (TTAB 1986); *Freedom Savings & Loan Ass'n v. American Fidelity Assurance Co.*, 222 USPQ 71, 74 (TTAB 1984). As to these classes of purchasers, it is settled that "the applicable standard of care is that of the least sophisticated consumer." *Giersch v. Scripps Networks Inc.*, 90 USPQ2d 1020, 1027 (TTAB 2009).

Moreover, we find that even as to purchasers of these services who might be somewhat more sophisticated or careful, they would not necessarily be immune to source confusion arising from use of similar marks on these closely related and/or identical services. "That the relevant class of buyers may exercise care does not necessarily impose on that class the responsibility of distinguishing between similar trademarks for similar goods." *In re Research and Trading Corp.*, 793 F.2d 1276, 1279, 230 USPQ 49, 50 (Fed. Cir. 1986).

These findings under the fourth *du Pont* factor, conditions of purchase, support an ultimate conclusion that a likelihood of confusion exists in this case.<sup>18</sup>

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<sup>18</sup> In any case, we find that this factor certainly would not weigh significantly in applicant's favor. At most it is neutral in our overall likelihood of confusion determination based on all of the relevant *du Pont* factors. See *In re Research and Trading Corp.*, *supra*, 230 USPQ at 50 ("Sophistication of buyers and purchaser

**Du Pont Factor 1: Similarity of the Marks.**

Finally, we consider the first *du Pont* factor, under which we determine the similarity or dissimilarity of applicant's mark and opposer's mark when they are viewed in their entireties in terms of appearance, sound, connotation and commercial impression. See *Palm Bay Imports, Inc.*, *supra*, 73 USPQ2d at 1692.

The test under the first *du Pont* factor 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 their overall commercial impressions as to be likely to cause confusion when used on or in connection with the goods and/or services at issue. See *Midwestern Pet Foods, Inc. v. Societe Des Produits Nestle S.A.*, 685 F.3d 1046, 103 USPQ2d 1435, 1449 (Fed. Cir. 2012); *Edom Labs, Inc. v. Lichter*, 102 USPQ2d 1546, 1551 (TTAB 2012).

Opposer's mark is "HELLO FUTURE.", depicted in standard character form. Applicant's mark in the '991 application is FUTURE, in italic block letters as depicted below.

***FUTURE***

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care are relevant considerations, but are not controlling on this factual record.").

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In terms of appearance, we find that the marks are similar to the extent that they both include or consist of the word FUTURE. We find that the minimal stylization of the lettering in applicant's mark does not distinguish the parties' marks visually. We find that the parties' marks look different to the extent that opposer's mark also includes the additional word HELLO and the concluding period after the word FUTURE.

In terms of sound, the marks are identical to the extent that both include the word FUTURE. The marks sound dissimilar to the extent that opposer's mark also includes the word HELLO at the start.

In terms of connotation and commercial impression, opposer's mark includes the word HELLO at the start and the concluding period at the end. These elements give opposer's mark the look and construction of a statement of greeting or welcome, which applicant's mark lacks. However, we find that the marks are similar to the extent that they both include the word FUTURE, which reasonably would or could have the same meaning and create the same commercial impression in both marks as applied to the identified financial services, i.e., as a reference to one's financial future. That is, in connection with these financial and investment services, the financial "future" to which one is extending a greeting or welcome in opposer's mark reasonably

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would or could be perceived as being the same "future" that is connoted by applicant's mark.

Considering the marks in their entireties in terms of appearance, sound, connotation and commercial impression, we find them to be similar due to the presence in both marks of the word FUTURE. This word is arbitrary or at most slightly suggestive when considered in relation to the identified financial and investment services, and it reasonably would or could have the same meaning and commercial significance in both marks. We find that the similarity between the marks arising from the presence of the word FUTURE in both marks outweighs the dissimilarities between the marks.

Also, in cases such as this where applicant's services are legally identical (in part) to opposer's services, the degree of similarity between the marks which is required to support a finding of likelihood of confusion declines. See *Citigroup Inc. v. Capital City Bank Group Inc.*, 637 F.3d 1344, 98 USPQ2d 1253, 1260 (Fed. Cir. 2011); *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ2d 1698, 1701 (Fed. Cir. 1992). We find that the parties' marks are sufficiently similar that if they were to be used in connection with these highly similar and in part identical financial and investment services, source confusion would be likely.

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Our finding under the first *du Pont* factor that the marks are similar supports an ultimate conclusion that a likelihood of confusion exists.

**Conclusion: A Likelihood of Confusion Exists.**

In short, we find that the parties' services, purchasers and trade channels are similar and legally identical in part, that the purchasers of these services would include ordinary consumers exercising only a normal degree of care, and that the parties' marks are similar. Based on these findings, we conclude that a likelihood of confusion exists. To the extent that any doubts might exist as to the correctness of our likelihood of confusion findings and/or conclusion (and we have none), we resolve those doubts, as we must, against applicant and in favor of opposer. See *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001, 1003 (Fed. Cir. 2002); *Hunt Control Systems Inc. v. Koninklijke Philips Electronics N.V.*, 98 USPQ2d 1558, 1569 (TTAB 2011).

**Opposer's Section 2(d) Ground of Opposition in the '939 Opposition: Conclusion.**

Having found that Section 2(d) priority is not at issue in this case because opposer's pleaded registration is of record, and having found that a likelihood of confusion

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exists, we sustain opposer's Section 2(d) ground of opposition in Opposition No. 91192939 to registration of applicant's mark in application Serial No. 76259991 as to the opposed Class 36.

**OPPOSITION NO. 91192939: CONCLUSION.**

Opposer's opposition to registration of applicant's mark in the '991 application as to Class 36 is sustained, based on both opposer's Section 1(b) and Section 2(d) grounds of opposition. We do not reach or decide opposer's Section 2(d) opposition as to Class 35.

**OPPOSITION NO. 91194817 TO APPLICATION SERIAL NO. 76690134, CLASS 36.**

In application Serial No. 76690134, filed on May 30, 2008, applicant seeks registration of the mark FUTURE (in block letter format as depicted below)

**FUTURE**

for, *inter alia*, the same Class 36 services as those identified in the '991 application, as discussed above in connection with the '939 opposition.

Opposer has opposed registration of applicant's mark in this '134 application, asserting as its grounds of

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opposition lack of bona fide intent under Trademark Act Section 1(b), and likelihood of confusion under Section 2(d). In support of its opposition to the '134 application here, opposer relies on the same evidence that it submitted for the '939 opposition to the '991 application, set forth above.

**OPPOSER'S STANDING.**

As was the case in the '939 opposition, opposer has established its standing to oppose in this '817 opposition by virtue of its properly having made its pleaded registration of record, showing that the registration is in effect and owned by opposer. (Opposer's NOR Exh. 4.)

**Opposer's Section 1(b) Ground of Opposition in the '817 Opposition.**

For all of the reasons discussed above in the '939 opposition as to opposer's Section 1(b) claim against applicant's '991 application, we find in this '817 opposition proceeding that applicant lacked the requisite bona fide intent to use his mark in commerce with respect to the opposed Class 36 services in the '134 application when he filed his intent-to-use application. We hereby incorporate those findings and that analysis as our findings

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and analysis in the present '817 opposition to applicant's '134 application.

Specifically, the evidence establishes that in filing his '134 application, applicant lacked the requisite bona fide intent to use his FUTURE mark on the Class 36 services identified in the application, and that he rather was merely attempting to reserve a general right in the mark. The evidence also establishes that applicant himself does not have the capacity render the Class 36 services identified in the application. Applicant's testimony regarding his actual efforts and activities with respect to his intent to use the mark in connection with the identified Class 36 services is too vague to be persuasive evidence of bona fide intent. Applicant's lack of any significant and probative documentary evidence regarding his claim of bona fide intent supports a finding that he lacked such bona fide intent as to the identified Class 36 services when he filed the application.

Finally, with respect to the TLRA legislative history discussed above which identifies an applicant's filing of multiple applications (or, we find, an application with multiple classes) as a circumstance which supports a finding of no bona fide intent, we note that the goods and services in applicant's '134 application ultimately were classified in eight classes, and that they cover a fewer number of

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goods and services than the plethora of goods and services identified in applicant's eleven-class '991 application.<sup>19</sup>

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<sup>19</sup> In addition to the Class 36 services involved in this opposition proceeding, applicant's identification of goods and services in the '134 identification includes:

Cosmetics; essential oils for personal use; soap for personal use; hair lotions; dentifrices; cosmetic bath oils; perfume; makeup; shampoos; non-medicated skin care preparations and antiperspirants; makeup kits comprising eye shadow, lipstick and blusher; cosmetic care products, namely, cosmetic skin lotions, cosmetic face creams; topical skin sprays for cosmetic purposes; and wrinkle removing skin care preparations,  
in Class 3;

motor vehicles, namely, automobiles, trucks, vans, cars, sport utility vehicles; aircraft; personal watercraft, namely, boats; vehicles, namely, experimental cars, concept cars, electric cars, gas cars; airplanes; seaplanes; family cars; racing cars; sports cars; gyro copters, namely, a rotary aircraft that uses a propeller to fly; helicopters; amphibious airplanes; military aircraft; experimental aircraft; spacecraft, namely, lunar rovers; recreational vehicles, namely, campers and motor homes; speed boats; locomotives; buses, yachts; sail boats; hovercraft; motorized scooters; all terrain vehicles; marine vehicles, namely, ferry boats; space shuttles; tractors; spacecraft, namely, rockets; motorcycles; bicycles; engines and motors for land vehicles; structural parts for automobiles,  
in Class 12;

Telecommunication services, namely, local and long distance transmission of voice, data, and graphics by means of telephone, telegraphic, cable and satellite transmissions,  
in Class 38;

Transportation of passengers and goods by air, boat, rail, bus, and space vehicles; providing airport terminal, bus terminal, ship terminal and space station terminal services, namely, transportation of passengers and goods by air, bus, ship and space shuttle; airline transportation; supply chain, logistics and reverse logistics services, namely, storage, transportation and delivery of documents, packages, raw materials; freight for others by air, rail, ship or truck; leasing of railway cars,  
in Class 39;

Industrial research in the field of vehicles, land craft, water craft, air craft, space craft and new inventions relating to vehicles,

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However, the goods and services in the eight-class '134 application still are quite numerous. We find it to be highly unlikely that applicant would be able to introduce these diverse goods and services during the pendency of this intent-to-use application, a fact which supports a finding of no bona fide intent under the TLRA legislative history.

For all of these reasons, we find that when he filed his '134 intent-to-use application, applicant lacked the requisite bona fide intent to use the FUTURE mark in commerce in connection with the identified Class 36 services. We therefore find that the application is void *ab initio* as to Class 36, and we sustain opposer's Section 1(b) ground of opposition as to that class.

**Opposer's Section 2(d) Ground of Opposition in the '817 Opposition.**

As was the case in the '939 opposition, Section 2(d) priority is not at issue in this '817 opposition because opposer has made its pleaded registration of record (opposer's NOR Exh. 4), showing that the registration is in effect and owned by opposer.

As to likelihood of confusion, we note that applicant's Class 36 services in the '134 application involved in this

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in Class 42;

Restaurants; delicatessens; hotels, in Class 43; and Managed health care services, in Class 44.

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'817 opposition proceeding are the same as the Class 36 services identified in the '991 application which was involved in the '939 opposition. Also, opposer's mark and services in its pleaded registration are the same in both oppositions.

We find that the only difference between applicant's '134 application and his '991 application is that the '134 application depicts the mark in regular block letters while the '991 application depicts the mark in italic block letters. We find that this difference between the marks in the two applications is *de minimis*. We find that it does not affect or alter our determination that the marks are similar under the first *du Pont* factor, nor does it affect or alter our ultimate conclusion based on all of the relevant *du Pont* factors that a likelihood of confusion exists.

Thus, we find that our Section 2(d) analysis and findings under the relevant *du Pont* factors in the '939 opposition against Class 36 of applicant's '991 application, discussed above, apply equally in this '817 opposition against Class 36 of applicant's '134 application. We hereby incorporate those findings and that analysis as our findings and analysis in the present '817 opposition. Based on those findings under the relevant *du Pont* factors, we

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conclude that a likelihood of confusion exists as to Class 36 of the '134 application.

To conclude, because priority is not an issue in this '817 proceeding, and because opposer has established that a likelihood of confusion exists, we sustain opposer's Section 2(d) ground of opposition to registration of applicant's mark in the '134 application, as to Class 36.

**Opposition No. 91194817: Conclusion.**

Opposer's '817 opposition to registration of applicant's mark as to Class 36 in the '134 application is sustained, based on both opposer's Section 1(b) and Section 2(d) grounds of opposition.

**DECISION.**

Opposition No. 91192939 as to the opposed Class 36 in application Serial No. 76269991 is sustained, based on both opposer's Section 2(d) and Section 1(b) grounds of opposition;

Opposition No. 91192939 as to the opposed Class 35 in application Serial No. 76269991 is sustained, based solely on opposer's Section 1(b) ground of opposition;

Opposition No. 91194817 as to the opposed Class 36 in application Serial No. 76690134 is sustained, based on both

**Opposition Nos. 91192939 and 91194817 (consolidated)**

opposer's Section 1(b) and Section 2(d) grounds of opposition;

Application Serial No. 76269991 shall go forward as to the nine non-opposed classes in the application; and

Application Serial No. 76690134 shall go forward as to the seven non-opposed classes in the application.