

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

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Buddy's Natural Chicken, Inc.

Serial No. 76698852

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for Buddy's Natural Chicken, Inc.

Kimberly Frye, Trademark Examining Attorney, Law Office 113
(Odette Bonnet, Managing Attorney).

Before Seeherman, Wellington and Wolfson,
Administrative Trademark Judges.

Opinion by Wellington, Administrative Trademark Judge:

Buddy's Natural Chicken, Inc. filed an application to register the mark BUDDY'S NATURAL CHICKEN (in standard character form) for "non-frozen and processed chicken" in International Class 29.¹ The wording "Natural Chicken" has been disclaimed.

The trademark examining attorney refused registration under Section 2(d) of the Trademark Act, 15 U.S.C.

¹ Application Serial No. 76698852, filed August 7, 2009, alleging first use anywhere and first use in commerce on December 1, 1989.

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§1052(d), on the ground that applicant's mark, when used in connection with applicant's goods, so resembles the previously registered mark BUDDIES (in typed letters) for "poultry, namely, chicken nuggets, chicken patties, chicken strips and chicken wings"² as to be likely to cause confusion.

After the examining attorney made the refusal final, this appeal followed.

Our determination under Section 2(d) is based on an analysis of all of the facts in evidence which are relevant to the factors bearing on the issue of whether there is a likelihood of confusion. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 568 (CCPA 1973).

However, as indicated in *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976), in any likelihood of confusion analysis, two key considerations are the relatedness of the goods at issue and the similarity or dissimilarity of the respective marks in their entirities.

We first consider the goods and, in doing so, we note that the question of likelihood of confusion must be determined based on an analysis of the goods recited in applicant's application vis-à-vis the goods identified in

² Registration No. 2418544 (issued January 9, 2001), renewed.

the cited registration. *In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687, 1690 n. 4 (Fed. Cir. 1993); and *Canadian Imperial Bank v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1783 (Fed. Cir. 1992). Where the goods in the application at issue and/or in the cited registration are broadly identified as to their nature and type, such that there is an absence of any restrictions as to the channels of trade and no limitation as to the classes of purchasers, it is presumed that in scope the identification of goods encompasses not only all the goods of the nature and type described therein, but that the identified goods are offered in all channels of trade which would be normal therefor, and that they would be purchased by all potential buyers thereof. *In re Elbaum*, 211 USPQ 639, 640 (TTAB 1981).

Here, both the involved application and cited registration include goods that may be broadly characterized as chicken meat or chicken meat products. Applicant's identification includes "non-frozen chicken, processed chicken,"³ while the cited registration covers

³ The examining attorney attached to her Office Action (issued April 7, 2010) a dictionary definition of the term "processed" (in the context of food) as meaning: treated with chemicals that preserve it or give it extra taste or color. From *Cambridge Dictionary of American English*, Cambridge University Press (2010); www.dictionary.cambridge.org.

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specific chicken parts or items, i.e., "chicken nuggets, chicken patties, chicken strips and chicken wings."

Applicant's description of goods is broad enough to include the chicken pieces covered by the cited registration and, as such, they are legally identical.

Because the goods are legally identical, we must presume that the channels of trade and classes of purchasers are the same. *In re Smith and Mehaffey*, 31 USPQ2d 1531, 1532 (TTAB 1994) ("Because the goods are legally identical, they must be presumed to travel in the same channels of trade, and be sold to the same class of purchasers"). These classes of purchasers include the public at large.

Accordingly, the *du Pont* factors involving the relatedness of the goods, trade channels and classes of purchasers all strongly favor a finding of likelihood of confusion.

This brings us to the similarity or dissimilarity of the marks. Initially, we point out that when marks would appear on identical goods, as they do here, the degree of similarity necessary to support a conclusion of likely confusion declines. *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992).

When comparing the marks, our focus is essentially on whether the marks are similar in sound, appearance, meaning, and commercial impression. *Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689 (Fed. Cir. 2005). In articulating reasons for reaching a conclusion on the issue of likelihood of confusion, there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on a consideration of the marks in their entireties. *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985). Merely descriptive or generic matter that is disclaimed may be accorded subordinate status relative to the more distinctive portions of a mark. *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531, 1533-34 (Fed. Cir. 1997).

In the present case, applicant has disclaimed the words NATURAL CHICKEN and we conclude that these terms are, respectively, highly descriptive and generic for chicken meat. Accordingly, we have no trouble concluding that the dominant feature of applicant's mark is the term BUDDY'S, and note that it is identical in sound to registrant's mark, BUDDIES. BUDDY'S is also very similar in appearance

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to registrant's mark, BUDDIES, as the two terms share the same first four letters and the final "S."

As to the commercial impressions and connotations of the marks, the examining attorney argues that they are very similar because the dominant element of applicant's mark, BUDDY'S, and the registered mark, BUDDIES, are both variations of the same root word, BUDDY, which is defined as "companion, friend" or "fellow" (used especially in informal address).⁴ The examining attorney asserts that as used in applicant's mark the term BUDDY'S is merely the possessive form whereas registrant's mark, BUDDIES, is the pluralized form - "one signifies something belonging to a friend and the other denotes more than one friend." Brief, (unnumbered) p. 2.

Applicant's principal argument on appeal, on the other hand, is that its mark has a different commercial impression from that of the registered mark. Specifically, applicant argues that its mark "conveys the impression that the natural chicken originates from a person named 'Buddy,'" which, according to applicant, is a "common and widely recognized 'given name or nickname.'" Brief, p. 4. In support, applicant cites to an online encyclopedia

⁴ From Merriam-Webster's Online Dictionary, dictionary entry attached to Office Action issued April 7, 2010.

(Wikipedia) entry for the term "Buddy."⁵ This online encyclopedia entry first provides that "'Buddy' may refer to: A friend or a partner for a particular activity." The same entry later provides that "Buddy" is a "given name or nickname" and then lists several individuals (real and fictional) who use(d) the name. Applicant also cites to use of its mark, displayed in the application's specimen of use, compared to registrant's use of its mark.⁶ In particular, applicant points out that "registrant always displays BUDDIES preceded by the adjective, DINO." Brief, p. 6.

With respect to the evidence of registrant's use as shown on its website, we cannot assume, as applicant suggests, that registrant's mark will always be preceded or modified by the term "Dino," when used on its goods. However, applicant's evidence regarding its own use of its mark versus the registrant's actual use of the registered

⁵ Applicant did not attach a printout of this online encyclopedia entry, but only provided the website address. However, the examining attorney did not object and, in fact, attached a printout from Wikipedia for the entry "Buddy" with her brief. Because applicant cited to this entry's web address and the examining attorney actually provided a printout, we have considered the information contained therein.

⁶ Printouts purportedly from registrant's website were submitted by applicant with its response to an office action filed January 28, 2010. In these printouts, the term "Dino" apparently is an abbreviation of "dinosaur" and the chicken pieces are shaped like miniature dinosaurs.

mark is relevant to the extent that it may indicate how consumers are likely perceive the relevant marks. In this respect, we agree that the evidence indicates that applicant's mark is used in the manner of a given name or nickname, and that applicant's mark will be understood as referencing an individual named "Buddy," rather than in the sense of a companion or friend. Nonetheless, any possible difference in the connotations of the marks does not outweigh the overall similarity between them. We emphasize that the dominant element of applicant's mark is the phonetic equivalent of the registered mark and appears very similar.

Ultimately, we conclude that consumers familiar with the BUDDIES mark for "poultry, namely, chicken nuggets, chicken patties, chicken strips and chicken wings," will likely be confused regarding source upon encountering applicant's mark BUDDY'S NATURAL CHICKEN for legally identical goods, considering the goods will be offered in the same trade channels and to the same class of consumers. Finally, to the extent that there is any doubt on the issue of likelihood of confusion, it is well settled that such doubt must be resolved against applicant and in favor of the prior user, registrant. *In re Pneumatiques, Caoutchouc*

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Manufacture et Plastiques Kleber-Colombes, 487 F.2d 918,
179 USPQ 729 (CCPA 1973).

Decision: The examining attorney's refusal to register
under Section 2(d) is affirmed.