

**THIS OPINION IS NOT A
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THE TTAB**

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Sajen, Inc.

Serial No. 77257189

Peter Kunin of Downs Rachlin Martin PLLC for Sajen, Inc.

Steven W. Jackson, Trademark Examining Attorney, Law Office
107 (J. Leslie Bishop, Managing Attorney).

Before Hairston, Holtzman and Zervas,
Administrative Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

On August 16, 2007, Sajen, Inc. filed an intent-to-use application to register the mark CL in standard character form for "jewelry, namely, earrings, pendants, rings, necklaces, brooches and other jewelry" in International Class 14.

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

§1052(d), on the ground that applicant's mark so resembles

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the marks in the following four registrations as to be likely, if used on or in connection with the identified goods, to cause confusion. Each of the registrations is owned by a different registrant.

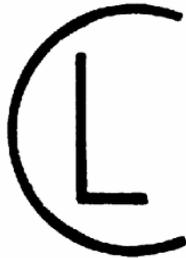
(1) Registration No. 1289991, issued August 14, 1984 (renewed), for the mark shown below for "jewelry."



(2) Registration No. 1525114, issued February 21, 1989 (renewed), for the mark shown below for, in relevant part, "jewelry." The registration contains a statement that the mark consists of "[t]he letters 'CL' and design."



(3) Registration No. 1645951, issued May 28, 1991 (renewed), for the mark shown below for "jewelry, namely, finger rings, bracelets, pendants and earrings."



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(4) Registration No. 3193015, issued January 2, 2007, for the mark shown below for "on-line retail store services featuring jewelry, clothing, and handbags." The registration contains the statement that the mark consists of "[t]he letters CL transposed on top of a floral type design similar to a Fleur-de-lis."



Applicant responded to the refusal by submitting a substitute drawing of its mark, as shown below.

CL

Applicant characterized the substitute drawing as a special form drawing and included a statement that "[t]he mark consists of CL depicted in all capital letters and standard typeface." Applicant argued that confusion is not likely with the marks cited by the examining attorney because it will use its mark only in the standard typeface in the substitute drawing. In addition, applicant argued that marks which include the letters "CL" for jewelry goods and services are weak marks and, therefore, entitled to only a limited scope of protection.

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The examining attorney accepted the substitute drawing, but was not persuaded by applicant's arguments on the issue of likelihood of confusion. The examining attorney argued that the marks are similar because "applicant's mark is CL and the registrants' marks are CL. The marks are very similar based on applicant's CL vs. registrants' CL. This is because the letters comprising the only distinctive matter at issue are identical and in the same order. The only difference is the registrant 3193015's mark includes a design element. However, if the word portions of the marks are identical in appearance, sound and meaning, then the addition of the design element does not obviate the similarity of the marks in this case." (second Office action, unnumbered p. 2) The refusal to register under Section 2(d) of the Act was continued and made final in the second Office action.

Applicant appealed, and applicant and the examining attorney have filed briefs.

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

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Maison Fondee En 1772, 396 F.3d 1369, 73 USPQ2d 1689 (Fed. Cir. 2005); In re Majestic Distilling Co., 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).

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 [or services] and differences in the marks." *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976); and *In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209 (TTAB 1999), and cases cited therein.

We review the relevant du Pont factors as they apply to this case.

We begin by comparing applicant's goods with the goods and services in each of the cited registrations. Applicant's goods are identified as "jewelry, namely, earrings, pendants, rings, necklaces, brooches and other jewelry." Registration Nos. 1289991, 1525114 and 1645951 all cover "jewelry." Thus, in this respect, applicant's goods and the goods in these registrations are legally identical. Applicant does not argue otherwise.

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Furthermore, we find that applicant's goods are related to the services identified in Registration No. 3193015. In this regard, it is well settled that confusion is likely to result from the use of the same or similar mark for goods, on the one hand, and for services, involving those goods, on the other hand. See *In re Hyper Shoppes (Ohio) Inc.*, 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir. 1988) [BIGG'S (stylized) for retail grocery store and general merchandise store services held likely to be confused with BIGGS and design for furniture]; *In re United Service Distributors, Inc.*, 229 USPQ 237 (TTAB 1986) [design for distributorship services in the field of health and beauty aids held likely to be confused with design for skin cream]; and *Steelcase Inc. v. Steelcare Inc.*, 219 USPQ 433 (TTAB 1983) [STEELCARE INC. for refinishing of furniture, office furniture, and machinery held likely to be confused with STEELCASE for office furniture and accessories]. In this case, on-line retail store services featuring, inter alia, jewelry, involve the sale of jewelry. Thus, we find that applicant's jewelry is related to registrant's on-line retail store services featuring, inter alia, jewelry. Again, applicant does not argue otherwise.

Insofar as the channels of trade and classes of purchasers are concerned, in the absence of any limitations

in the identification of goods in applicant's application and the identifications of goods and services in the cited registrations, we find that the channels of trade and purchasers are at the very least overlapping. Thus, if applicant's goods and the registrants' goods and services were to be offered under the same or similar marks, confusion would be likely to result.

Accordingly, the du Pont factors of the similarity/dissimilarity of the goods and/or services, trade channels and classes of purchasers favor a finding of likelihood of confusion.

We turn now to a comparison of applicant's mark and each of the cited marks in their entireties. The test under this 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 terms of their overall commercial impression that confusion as to the source of the goods offered under the respective marks is likely to result. The focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. See *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975).

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In this case, each of the cited marks shown below is extremely stylized and striking:

Registration No. 1289991



Registration No. 1525114



Registration No. 1645951



Indeed, the degree of stylization of the letters which form each of the above marks is so high that "[they are] therefore in the gray region between pure design marks which cannot be vocalized and word marks which are clearly intended to be." Georgia-Pacific Corp. v. Great Plains Bag Co., 614 F.2d 757, 204 USPQ 697, 699 (CCPA 1980).

In contrast, applicant's CL mark is depicted in capital letters and standard font, as shown below:

CL

Because the stylization of each of the above cited marks is so extreme and striking, they are entirely different in appearance from applicant's mark and they create different commercial impressions than applicant's mark. These differences outweigh any similarities in sound between the cited marks and applicant's mark, assuming the cited marks would be pronounced at all. When viewed in their entireties, the stylization of the cited marks renders the letters "CL" therein virtually unrecognizable or so subordinate to the overall commercial impressions as to make it unlikely that purchasers would associate applicant's mark with any of these marks.

We also find that applicant's mark differs in appearance and commercial impression from the mark in Registration No. 3193015, shown below.



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The design element in this cited mark and the way in which such element and the letters "CL" are integrated, create a visual impression that is quite different from the appearance of the applicant's mark. Again, applicant's mark is merely the letters "CL" in capital letters and a standard font. The cited mark, however, is more than merely a stylized presentation of the letters "CL;" it includes a prominent and integral floral type design. Such differences outweigh any similarities in sound between the cited mark and applicant's mark. We find, therefore, that when the cited mark and applicant's mark are considered in their entireties, they are quite different in appearance and commercial impression, notwithstanding that they share the letters "CL."

Accordingly, the du Pont factor of the similarity/dissimilarity of the marks favors applicant with respect to each of the cited marks.

In reaching our determination that applicant's mark is dissimilar from each of the cited marks, we have not relied on applicant's argument that marks which consist of or include the letters "CL" for jewelry goods and services are weak marks and, therefore, entitled to only a limited scope of protection. In support of its position in this regard applicant points to the co-existence of the four cited

registrations. While third-party registrations may be used in a manner analogous to a dictionary to show that a mark or portion thereof is descriptive or suggestive, it is not clear what the descriptive or suggestive significance of the letters "CL" are in relation to jewelry.

Rather, as previously discussed, the marks in each of the cited registrations are more than merely presentations of the letters "CL." Three of the marks are extensively stylized and striking; the other mark includes a prominent design element which is integrated with the letters "CL." As a result, each of the cited marks differs in appearance and creates a different commercial impression from applicant's CL mark.

In view of the foregoing, we conclude that notwithstanding the identity/relatedness of the involved goods and services and the overlap in trade channels and classes of purchasers, confusion is not likely to result in this case.

Decision: The refusal to register under Section 2(d) of the Trademark Act is reversed as to each of the cited registrations.