

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

Mailed:
June 2, 2010
Bucher

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Grand Prix Import Inc.

Serial No. 77408025

Jay S. Horowitz of Jay S. Horowitz, P.C. for Grand Prix Import Inc.

Nakia D. Henry, Trademark Examining Attorney, Law Office 111 (Craig D. Taylor, Managing Attorney).

Before Bucher, Holtzman and Zervas, Administrative Trademark Judges.

Opinion by Bucher, Administrative Trademark Judge:

Applicant seeks registration on the Principal Register of the following special form mark:

SPYNN

for goods identified as "automobile parts and accessories, namely, road wheels, steering wheels, air horns, safety belts, seat covers, steering wheel covers, gear knobs, consoles, sun visors, seats, brake pedals, acceleration

pedals, clutch pedals, and shift handle housings" in International Class 12.¹

This case is now before the Board on appeal from the final refusal of the Trademark Examining Attorney to register this designation based upon Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d). The Trademark Examining Attorney has taken the position that applicant's mark, when used in connection with the identified goods, so resembles the following mark:

The image shows the word "SPYNN" written in a thick, black, hand-drawn, sans-serif font. The letters are slightly irregular and have a casual, sketched appearance. The 'S' is on the left, followed by 'P', 'Y', and 'N'. The second 'N' is significantly larger and more prominent than the first 'N', and the 'Y' is also quite large and fills most of the width of the word.

registered for "audio equipment namely speakers, equalizers, and amplifiers" in International Class 9,² as to be likely to cause confusion, to cause mistake or to deceive.

The Trademark Examining Attorney and applicant have briefed the issue involved in this case. We reverse the refusal to register.

In support of the Office's final refusal, the Trademark Examining Attorney contends that applicant's and

¹ Application Serial No. 77408025 was filed on February 27, 2008 based upon applicant's claims of first use anywhere and first use in commerce at least as early as April 10, 2004.

² Registration No. 3333677 issued to Magnetics USA, Inc. on November 13, 2007.

registrant's goods are related goods that move in the same channels of trade, and that the stylization of the two marks does not obviate the confusing similarity of the marks in this case.

By contrast, in urging registrability, applicant argues that the differences between applicant's and registrant's listed goods, combined with the stark differences in the styles of the marks themselves, prevents any likelihood of confusion between its mark and the cited mark.

As we turn to a consideration of likelihood of confusion, our determination is based upon our analysis of all of the probative facts in evidence that are relevant to the factors bearing on this issue. See *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973).

Applicant's goods, as seen above, include "automobile parts and accessories, namely, road wheels, steering wheels, air horns, safety belts, seat covers, steering wheel covers, gear knobs, consoles, sun visors, seats, brake pedals, acceleration pedals, clutch pedals, and shift handle housings." Registrant's goods are identified as "audio equipment namely speakers, equalizers, and amplifiers." The Trademark Examining Attorney implicitly takes the position that registrant's identified goods could well include audio equipment for installation in automobiles. Given the

broadness of this identification, even if applicant had argued that registrant is in the business of high-end, audio equipment for professional quality broadcast and recording studios, and not audio components compatible with automobile installations, we must construe registrant's goods as including ordinary audio equipment for installation in automobiles.

However, there is certainly no *per se* rule that everything that can be customized as an accessory for automobiles is closely related. The Trademark Examining Attorney (newly assigned to this case after the appeal had been filed) attached to a form-paragraph denial of applicant's request for reconsideration two web pages purporting to show the relationship of automobile stereos and wheels. This represents the totality of the evidence placed into the record.

The first web page contains a consumer's unfavorable review of the work of Don's Car Stereo in Lynchburg, VA, in installing a "souped-up stereo system" in Randy's Jeep. From the totality of this excerpt, we learn that in addition to installing stereos in automobiles, Don evidently also replaces windshield wiper blades, tints truck window and installs custom wheels:

Don's Car Stereo-Custom Truck-Tint Tire Wheels
 Based on 1 review
 Category: Stereo Installation [Edit]
 21174 Timberlake Rd
 Lynchburg, VA 24502
 (434) 237-4775

Add Photos

Edit Business Info | Is this your business?
 First to Review | Randall B.

Send to Friend | Bookmark | Send to Phone | Write a Review | Print version

Need a Car Stereo? Save up to \$65 with Free Custom Install Gear on Orders Over \$129! www.Crutchfield.com
 Damascus Stereo Installation Let Our Trained Electricians Handle All Your Audio & Video Wiring. StandiferElectric.com

Ads by Google

POWERED BY Google
 Map data ©2009 Tele Atlas
 View Larger Map | Directions »

Browse Nearby:
 Restaurants | Nightlife | Shopping | Movies | All

1 review for Don's Car Stereo-Custom Truck-Tint Tire Wheels

Sort by: Yelp Sort | Date | Rating | Elites'

Randall B. Lynchburg, VA
 3/9/2009

"upon buying a new brand new jeep i decided to get a souped up stereo system installed. After dons did it my entire electronics panel was messed up. I took it back and they "fixed" it. Then my wipers didnt work. The 3rd time i went in with other people all around...the manager came out and yelled "how do we know you didnt do something to this vehicle and are making us fix it!" I took i. back to the Jeep dealership and they said they didnt have the proper tools for the job and it was thier fault. I never contacted Dons after that but after that experience i can say that in my whole life that was the worst customer experience i have ever had hands down. I would never use them in any way period!"

Open Now

The Orange Savings Account
 High

Xtreme Car Toyz

Call Us at (205)791-0111 • Birmingham, Alabama

Home | Accessories | Special Offer | Location | Contact

Birmingham's Premier Auto Shop
 Wheels and Tires • Car Stereo Systems

Stop by **Xtreme Car Toyz** for the best in car accessories. From car stereo systems to wheels and tires, our auto shop has everything you need all in one place. We also provide audio and video players, chrome door handles, and interior lights. Our shop even offers widow tinting with Lumar™ tint window film. Contact our auto shop in Birmingham, Alabama, for car stereo systems, wheels and tires, and audio/video players. We serve the city of Birmingham.

Special Offer
 Receive 10% Off All Purchases over \$200!

Stop By Our Showroom—If You Have Questions, Just Ask for Donnie

Hours of Operation: Monday–Saturday, 9:00 a.m.–6:00 p.m.

DISCOVER | MasterCard | VISA

Home | Accessories | Special Offer | Location | Contact

Xtreme Car Toyz
 905 Forestdale Boulevard
 Birmingham, AL 35214-3853

Phone: (205)791-0111
 Toll Free: (888) 392-5198
 Fax: (205) 798-0156
 xtremecartoyz@yahoo.com

web.com

Copyright © 2009 by Web.com Group, Inc.

As seen above, the second example is an advertisement for "Xtreme Car Toyz" in Birmingham, AL, claiming to offer a wide array of custom accessories for the automobile owner anxious to "trick out" his vehicle with chrome, lights and the latest audio/visual entertainment systems.

This represents the totality of the evidence in the file in support of the Trademark Examining Attorney's position that applicant's and registrant's goods are related, and, more specifically, that automobile owners might encounter the respective goods in the same channels of trade - namely, those selling and/or installing after-market auto accessories. There is still no evidence that these very different goods are ever sold under the same mark. Based on this record, we cannot assume that automobile owners in the market for custom accessories would expect the same companies that produce wheels and brake pedals for automobiles would also produce stereo equipment. On the key *du Pont* factor focusing on the relationship of the goods, we find this evidence insufficient to demonstrate that audio equipment is related to automobile parts and accessories.

As to the marks, the term "Spyn" appears to be arbitrary for all the relevant goods, and hence, a fairly strong mark. Yet, despite the near identity of the marks, the record does not show that the respective goods are

related such that purchasers are likely to assume that the goods emanate from a single source.

We note that the originally-assigned Trademark Examining Attorney failed to submit any evidence with either the initial or the final Office action. "The examining attorney must provide evidence showing that the goods and services are related to support a finding of likelihood of confusion." TMEP § 1207.01(a)(vi). Had applicant not requested reconsideration but rather proceeded with merely an appeal, we would have been faced with a case having absolutely no evidence in support of a refusal. Aside from the manifest injustice to applicant of having had to suffer the expense of an appeal in a case with no evidence, the Board would have had to expend its resources in processing and deciding an appeal with a result that would have been clear to all.

However, in the fall of 2009, the newly-assigned Trademark Examining Attorney, upon finding a case on appeal without any evidence in the record but determining it appropriate to adhere to the action from which the appeal was taken, should have rightly wanted to supplement the record with new and substantial evidence. On the other hand, her weak attempt to introduce insubstantial evidence as an appendage to a form denial of request for

reconsideration does not comport with good examination practice, and basically wastes everyone's time. This situation should have resulted in the newly-assigned Trademark Examining Attorney's filing a written request for the Board to suspend the appeal and remand the application for further examination. TBMP § 1207.02 (2d ed. 2004).

Decision: The refusal to register under Section 2(d) of the Lanham Act is hereby reversed.