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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re SeaOne Maritime Corp.

Serial No. 77436033

Mark J. Shean of Orrick, Harrington & Sutcliffe for SeaOne
Maritime Corp.

Karen P. Severson, Trademark Examining Attorney, Law Office
117 (Brett Golden, Managing Attorney).

Before Quinn, Bergsman and Ritchie, Administrative
Trademark Judges.

Opinion by Quinn, Administrative Trademark Judge:

SeaOne Maritime Corp. filed, on March 31, 2008, an
intent-to-use application to register the mark CGL (in
standard character form) for "transportation services,
namely, transportation of natural gas via marine tankers"
(in International Class 39).

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, if used in

connection with applicant's services, would so resemble the previously registered mark shown below



for "freight forwarding" (in International Class 39)¹ as to be likely to cause confusion.

When the refusal was made final, applicant appealed. Applicant and the examining attorney filed briefs.

Applicant argues that the differences between its and registrant's services, coupled with the sophistication of customers for the services, are sufficient to make confusion unlikely to occur. Applicant asserts that "the Registrant provides the shipment logistics services to customers for transport of various goods via air, ground and ocean," while "Applicant's services are highly specialized and involve the actual transportation of specific products." (Brief, p. 2). Applicant further contends that purchasers for its and registrant's services are likely to be discriminating due to the high cost of the

¹ Registration No. 2540513, issued February 19, 2002; Section 8 affidavit accepted, Section 15 affidavit acknowledged.

services and the need for a quality provider for the customer's shipping needs.

The examining attorney maintains that applicant's mark is identical to the dominant, literal portion of registrant's mark. Further, the services, according to the examining attorney, are closely related. In connection with this later contention, the examining attorney introduced several third-party registrations based on use showing the same entity has registered the same mark for both transportation services and freight forwarding services. In addition, the examining attorney submitted excerpts of third-party websites revealing that the same entity renders both types of services. The similarity between the marks and the relatedness of the services outweigh any sophistication of purchasers, the examining attorney contends.

Our determination of the issue of likelihood of confusion is based on an analysis of all of the probative facts in evidence that are relevant to the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). See also *In re Majestic Distilling Co., Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). In any likelihood of confusion analysis, however, two key considerations are the similarities

between the marks and the similarities between the goods and/or services. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976).

Turning first to the marks, we must compare the marks in their entireties as to appearance, sound, connotation and commercial impression to determine the similarity or dissimilarity between them. *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689 (Fed. Cir. 2005). 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 terms of their overall commercial impression that confusion as to the source of the services offered under the respective marks is likely to result.

It is well settled that one feature of a mark may be more significant than another, and it is not improper to give more weight to this dominant feature in determining the commercial impression created by the mark. *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985) ("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 consideration of the marks in their

entireties. Indeed, this type of analysis appears to be unavoidable.”).

Where both words and a design comprise the mark (as is the case with the registered mark), then the words are normally accorded greater weight because the words are likely to make an impression upon purchasers, would be remembered by them, and would be used by them to request the goods and/or services. *In re Appetito Provisions Co.*, 3 USPQ2d 1553, 1554 (TTAB 1987); and *Kabushiki Kaisha Hattori Tokeiten v. Scutto*, 228 USPQ 461, 462 (TTAB 1985). See also *Giant Food, Inc. v. Nation's Food Service, Inc.*, 710 F.2d 1565, 218 USPQ 390 (Fed. Cir. 1983). Thus, although we have taken into account the design feature of the registered mark, which, we should add, is relatively non-distinctive, we find that the dominant portion is the literal letter portion, CGL. This CGL portion is identical to applicant's mark CGL.

In view thereof, we find that applicant's CGL mark and registrant's CGL and design mark are similar in appearance, and identical in sound. As to meaning, the letters in registrant's mark appear to be an abbreviation of registrant's name, whereas applicant's mark appears to be arbitrary. In any event, purchasers may not even be aware of registrant's name, and thus it is just as likely that

purchasers will ascribe the same meaning to the identical letters "CGL" in each mark. Finally, the marks, when considered in their entireties, engender highly similar overall commercial impressions.

Applicant does not contend that the marks are dissimilar. In fact, its brief is completely silent on this *du Pont* factor. We find that the similarity between the marks weighs in favor of a finding of likelihood of confusion.

We next turn to consider the *du Pont* factor regarding the similarity between the services. It is not necessary that the respective services be competitive, or even that they move in the same channels of trade to support a holding of likelihood of confusion. It is sufficient that the respective services are related in some manner, and/or that the conditions and activities surrounding the marketing of the services are such that they would or could be encountered by the same persons under circumstances that could, because of the similarity of the marks, give rise to the mistaken belief that they originated from the same producer. *In re Melville Corp.*, 18 USPQ2d 1386 (TTAB 1991). The question of likelihood of confusion is determined based on the identification of services in the application vis-à-vis the services as set forth in the

cited registration. *In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687, 1690 n.4 (Fed. Cir. 1993); and *In re Jump Designs, LLC*, 80 USPQ2d 1370, 1374 (TTAB 2006). The issue is not whether consumers would confuse the services themselves, but rather whether they would be confused as to the source of the services.

Registrant's services, "freight forwarding," are broadly worded; and, as shown by the third-party registration evidence, these services are related to applicant's transportation services. In this connection, the examining attorney submitted numerous use-based third-party registrations showing that the same entity registered a single mark for both freight forwarding and various transportation services. "Third-party registrations which cover a number of differing goods and/or services, and which are based on use in commerce, although not evidence that the marks shown therein are in use on a commercial scale or that the public is familiar with them, may nevertheless have some probative value to the extent that they may serve to suggest that such goods or services are of a type which may emanate from a single source." *In re Mucky Duck Mustard Co.*, 6 USPQ2d 1467, 1470 n.6 (TTAB 1988), *aff'd*, 864 F.2d 149 (Fed. Cir. 1988). See also *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-86 (TTAB

1993). Typical examples include the following:

"transportation services, namely transportation of documents, goods and parcels by land, sea and air," and "freight brokerage and forwarding of cargo" (Reg. No. 3399485); "transportation and storage of fuels" and "freight forwarding" (Reg. No. 3431834); and "transportation of goods, freight, and containers, by air, ship, truck, and rail," and "freight forwarding" (Reg. No. 3446882).

The examining attorney also submitted excerpts of several third-party websites showing that the same entity renders both types of services, namely transportation services and freight forwarding. One example reads as follows: "Transport Express is more than a freight forwarding company, we are a full service transportation provider." (www.transportexpress.com).

As noted earlier, registrant's "freight forwarding" services are broadly worded. Where the services 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 services encompasses not only all the services of the nature and

type described therein, but that the identified services are offered in all channels of trade which would be normal therefore, and that they would be purchased by all potential buyers thereof. *In re Elbaum*, 211 USPQ 639, 640 (TTAB 1981). Thus, we must assume that registrant's freight forwarding services are offered via ships to entities in the energy field, just as in the case of applicant's transportation of natural gas via marine tankers.

In view of the above, we find that the services, and the trade channels and classes of customers therefor are similar. These *du Pont* factors weigh in favor of a finding of likelihood of confusion.

We will assume, as applicant contends, that the involved services, especially applicant's, are rendered to sophisticated customers who are discriminating due to the expensive cost of the services and the need for a quality provider for shipping needs. Nevertheless, even careful purchasers are likely to be confused when encountering similar services offered under very similar marks. As stated by our primary reviewing court, "[t]hat 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. 'Human

memories even of discriminating purchasers ... are not infallible.'" *In re Research and Trading Corp.*, 793 F.2d 1276, 230 USPQ 49, 50 (Fed. Cir. 1986) quoting *Carlisle Chemical Works, Inc. v. Hardman & Holden Ltd.*, 434 F.2d 1403, 168 USPQ 110, 112 (CCPA 1970). The similarity between the marks and the similarity between the services outweigh any sophisticated purchasing decision. See *HRL Associates, Inc. v. Weiss Associates, Inc.*, 12 USPQ2d 1819 (TTAB 1989), *aff'd*, *Weiss Associates, Inc. v. HRL Associates, Inc.*, 902 F.2d 1546, 14 USPQ2d 1840 (Fed. Cir. 1990) (similarities of goods and marks outweigh sophisticated purchasers, careful purchasing decision, and expensive goods).

We conclude that purchasers familiar with registrant's freight forwarding services rendered under the mark CGL and design would be likely to mistakenly believe, upon encountering applicant's mark CGL for transportation services, namely, transportation of natural gas via marine tankers, that the services originated with or are somehow associated with or sponsored by the same entity.

Lastly, to the extent that any of the points raised by applicant raise a doubt about likelihood of confusion, that doubt is required to be resolved in favor of the prior

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registrant. *In re Martin's Famous Pastry Shoppe, Inc.*, 748
F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984).

Decision: The refusal to register is affirmed.