

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

Mailed:  
December 2, 2010

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**Trademark Trial and Appeal Board**

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In re Jayco, Inc.

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Serial No. 77619590

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Gerard T. Gallagher of Barnes & Thornburg for Jayco, Inc.

Benji Paradewelai, Trademark Examining Attorney, Law Office  
101 (Ronald R. Sussman, Managing Attorney).

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Before Walters, Bergsman and Ritchie,  
Administrative Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

Jayco, Inc. ("applicant") filed a use-based application to register the mark BAJA, in standard character form, for "recreational vehicles, namely, folding camping trailers," in Class 9. Folding camping trailers "are lightweight units that break down and store, folded for travel, inside its solid roof and base trailer. The sides are usually made of canvas, supported by a telescoping steel or aluminum frame."<sup>1</sup> The specimen of use

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<sup>1</sup> Thomas Stephens, Sr., *Folding Camping Trailers: The Advantages of Buying a Pop-Up* (November 23, 1999) from an unidentified website attached to the September 23, 2009 Office Action.

Serial No. 77619590

displaying applicant's mark on a folding camping trailer is reproduced below.



The Trademark Examining Attorney refused to register applicant's mark under Section 2(d) of the Trademark Act of 1946, 15 U.S.C. §1052(d), on the ground that applicant's mark is likely to cause confusion with the previously registered mark BAJA, in typed drawing form, for "automobiles and structural parts therefore," in Class 12.<sup>2</sup>

Our determination of likelihood of confusion under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the issue of likelihood of confusion. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973); *see also, In re Majestic Distilling Company, Inc.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). In any likelihood of confusion

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<sup>2</sup> Registration No. 2759819, issued September 2, 2003; Sections 8 and 15 affidavits accepted and acknowledged.

analysis, two key considerations are the similarities between the marks and the similarities between the goods and services. *See Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) ("The fundamental inquiry mandated by §2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks").

- A. The similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression.

The marks are identical.

- B. The similarity or dissimilarity and nature of the services described in the application and goods described in the registration, likely-to-continue trade channels and classes of consumers.

To show that folding camping trailers and automobiles are related, the examining attorney submitted third-party registrations identifying both products.<sup>3</sup> Third-party registrations which individually cover a number of different products that are based on use in commerce may have some probative value to the extent that they serve to suggest that the listed products are of a type which may emanate from the same source. *In re Albert Trostel & Sons*

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<sup>3</sup> The examining attorney submitted the third-party registrations twice: once in the February 2, 2009 Office Action and once in the September 23, 2009 Office Action. The evidence should only be submitted once.

Serial No. 77619590

Co., 29 USPQ2d 1783, 1785-1786 (TTAB 1993); *In re Mucky Duck Mustard Co. Inc.*, 6 USPQ2d 1467, 1470 n.6 (TTAB 1988).

The registrations are listed below.<sup>4</sup>

Mark	Registration No.	Goods/Services
KING LONG	2394684	Automobiles; camping trailers
Automobile design	3038741	Automobiles; camping trailers
HORNLIN	3041188	Automobiles; camping trailers
FUXIN VEHICLE	3126216	Automobiles; camping trailers
GWM	3270090	Cars; camping trailers
SWINGOUT	2807525	Vans; camping trailers

The examining attorney also submitted excerpts from websites showing that Volkswagen manufacturers automobiles and campers.<sup>5</sup>

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<sup>4</sup> We have not included the entire description of goods listed in each registration. Only the goods found in both applicant's application and the cited registration or goods encompassing the goods are listed. We have given no weight to Registration No. 3292581 for the mark PIECEOFMIND which appears to be a house mark used for such a wide variety of goods that the inclusion of automobiles and camping trailers is not particularly significant. *In re Mucky Duck Mustard Co. Inc.*, 6 USPQ2d at 1470 n.6 (registrations issued to Saks & Company and to Knott's Berry Farm, owners of a large department store and an amusement or theme center, respectively, where a wide variety of goods and services are sold have very little persuasive value).

<sup>5</sup> February 2, 2009 Office Action.

The examining attorney further contends that automobiles and camping trailers are complementary products that may be used together. The previously referenced article by Thomas Stephens Sr. noted that "[j]ust about everyone who owns a medium sized car, minivan, SUV or pickup can safely tow a pop-up. See also Sylvia Cochran, *The Best Camping Trailers* (trailers.com) ("[Camping trailers] mimic a box that you may tow with a truck SUV or - depending on size -- even a passenger car"); *RV Class Description* (aaa-calif.com) (camping trailers "can be towed with just about any size car, truck or SUV").<sup>6</sup>

The examining attorney submitted excerpts from online retailers to show that the same retailers sell both automobiles and camping trailers.<sup>7</sup> In fact, Moore's Auto Sales and RV Sales (mooresautosales.com and mooresrvsales.com), Oak Lake RV Sales & Services (oaklakerv.com) and the retailer at haylettnorthcountry.com sell applicant's trailers as well as automobiles.

Applicant argues that just because automobiles and camping trailers can be used together does not mean that consumers will mistakenly believe that they emanate from a single source and that "the mere fact that certain third

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<sup>6</sup> September 23, 2009 Office Action.

<sup>7</sup> September 23, 2009 Office Action.

parties may sell used recreational vehicles and used cars does not indicate that the goods are related or that they move in the same channels of trade."<sup>8</sup>

While automobiles and folding camping trailers are different products, the issue regarding the similarity of the goods and channels of trade must be view in the context of whether relevant consumers would be confused as to source or sponsorship. In this regard, it is relevant to consider the degree of overlap of consumers exposed to the respective goods. As explained in *Philip Morris Inc. v. K2 Corp.*, 555 F.2d 815, 194 USPQ 81, 82 (CCPA 1977), even when goods or services are not competitive or intrinsically related, the use of identical marks can lead to the assumption that there is a common source. In this case, the evidence of record shows that automobiles and camping trailers may emanate from the same source, consumers use the products together and they may be purchased at a single location. Accordingly, we find that the goods are related, the channels of trade are similar and the classes of consumers are the same.

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<sup>8</sup> Applicant's Brief, p. 2. Contrary to applicant's argument, the retailer at haylettnorthcountry.com sells new Jayco camping trailers.

- C. The conditions under which and buyers to whom sales are made (i.e., "impulse" vs. careful, sophisticated purchasing).

Applicant argues that its folding camping trailers would be purchased "by the most discriminating buyers, thereby preventing any likelihood of confusion."<sup>9</sup> Furthermore, applicant contends that its folding camping trailers cost \$10,000 and that registrant's automobiles would cost at least that much.<sup>10</sup>

We recognize that the purchasers of applicant's folding camping trailers and registrant's automobiles are likely to exercise a high degree of care. However, even careful consumers are not immune to trademark confusion, especially where, as here, the marks are identical. Thus, although this factor favors a finding of no likelihood of confusion, given the identity of the marks and the relatedness of the goods, it is not sufficient to outweigh the other factors.

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<sup>9</sup> Applicant's Brief, p. 3.

<sup>10</sup> Applicant's Brief, p. 3.

Serial No. 77619590

E. Balancing the factors.

After considering all of the relevant *du Pont* factors, as discussed above, we find that applicant's mark BAJA for folding camping trailers is likely to cause confusion with Registration No. 2759819 for the mark BAJA for automobiles.

Decision: The refusal to register is affirmed.