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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re NuVision U.S., Inc.

Serial No. 77720572

Stacie K Smith and Ray K. Harris of Fennemore Craig, for
NuVision U.S., Inc.

Amy L. Kergate, Trademark Examining Attorney, Law Office 113
(Odette Bonnet, Managing Attorney).

Before Mermelstein, Bergsman and Ritchie, Administrative
Trademark Judges.

Opinion by Ritchie, Administrative Trademark Judge:

NuVision U.S., Inc. ("applicant") filed an application to register the mark FLATSCREEN CONNOISEUR, in standard character form, for goods identified as "home theatre products, namely televisions, LCD televisions, plasma televisions, flat panel televisions and DVD players," in International Class 9.¹ The Trademark Examining Attorney refused registration of applicant's

¹ Serial No. 77720572, filed April 23, 2009, pursuant to Section 1(b) of the Trademark Act, 15 U.S.C. §1051(b), claiming a bona fide intent to use the mark in commerce, and disclaiming the exclusive right to use the term "FLATSCREEN" apart from the mark as shown.

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mark under Section 2(d) of the Trademark Act of 1946, 15 U.S.C. §1052(d), on the ground that applicant's mark so resembles the registered mark CONNOISSEUR, in standard character form, for "sound equipment, namely, loudspeakers," in International Class 9,² that when used on or in connection with applicant's identified goods, it is likely to cause confusion or mistake or to deceive.

Upon final refusal of registration, applicant filed a timely appeal. Both applicant and the examining attorney filed briefs, and applicant filed a reply brief. For the reasons discussed herein, the Board affirms the refusal to register.

We base our determination under Section 2(d) on an analysis of all of the probative evidence of record bearing on a 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 analysis, two key considerations are the similarities between the marks and the similarities between the goods or services. *See Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) ("The fundamental inquiry

² Registration No. 3188740, issued December 26, 2006.

mandated by §2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks"). We discuss each of the *du Pont* factors as to which applicant or the examining attorney submitted argument or evidence.

The Marks

We consider and compare the appearance, sound, connotation and commercial impression of the marks in their entireties. *In re E. I. du Pont De Nemours & Co.*, 177 USPQ at 567. The mark in the cited registration consists entirely of the word CONNOISSEUR. The examining attorney has submitted a definition of this term as meaning "a person with expert knowledge or training, especially in the fine arts; a person of informed and discriminating taste."³ Applicant accordingly urges us to find the term to be descriptive of registrant's identified goods. We decline to do so, and find it to be distinctive, a presumption to which registrant is entitled with a mark registered on the Principal Register.

Applicant's mark consists of the words "FLATSCREEN CONNOISSEUR." We find the disclaimed term "flatscreen" to be descriptive of the "televisions" and "flat panel televisions"

³ American Heritage Dictionary (4th ed. 2000).

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for which applicant seeks registration. Accordingly, "CONNOISSEUR" is clearly the dominant term in applicant's mark. *In re National Data Corp.*, 224 USPQ 749, 751 (Fed. Cir. 1985) ("[T]here 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."). In this regard, the marks have similar connotations and commercial impressions; specifically, consumers may mistakenly believe that FLATSCREEN CONNOISEUR is a derivative of the CONNOISSEUR line.

As for the appearance and sound of the marks, although applicant's mark contains FLATSCREEN as an additional element to CONNOISSEUR, our precedent has found that adding a descriptive word to a mark does not necessarily obviate likelihood of confusion. *In re Denisi*, 225 USPQ 624, 626 (TTAB 1985) ("the fact that [applicant's] mark herein [PERRY'S PIZZA] incorporates the descriptive term 'pizza' as part of the mark presented for registration does not obviate the likelihood of confusion with the mark of the cited registration [PERRY'S]"); *Johnson Publishing Co. v. International Development Ltd.*, 221 USPQ 155, 156 (TTAB 1982) (EBONY for cosmetics and EBONY DRUM for hairdressing and conditioner); *In re South Bend Toy Manufacturing Company, Inc.*, 218 USPQ 479, 480 (TTAB 1983) (LIL' LADY BUGGY for toy doll carriages is likely to cause confusion

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with LITTLE LADY for doll clothing because "the word 'buggy' is clearly descriptive of applicant's doll carriage products" and "would fail to alter the perceived identity of the dominant and more arbitrary 'LITTLE LADY' and 'LIL' LADY' elements of these marks"). Accordingly, applicant's mark FLATSCREEN CONNOISSEUR is very similar to registrant's mark CONNOISSEUR.

Applicant argues that the Board should take into account how the marks are how used. Specifically, applicant argues that both applicant and the registrant use their respective marks with their "house marks," which alleviates confusion. However, what is at issue in this appeal is solely the mark that applicant seeks to register, FLATSCREEN CONNOISSEUR. Similarly, the cited registration, as registered, consists solely of the term CONNOISSEUR. Thus, these are the marks that we must consider and compare in our 2(d) analysis, regardless of "house marks" that either party may also use in practice in conjunction with the marks at issue here today. *In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1688, 1690 n.4 (Fed. Cir. 1993). See also *Chesebrough-Pond's Inc. v. Soulful Days, Inc.*, 228 USPQ 954, 956 (TTAB 1985); *Fort Howard Paper Co. v. Marcal Paper Mills, Inc.*, 189 USPQ 305, 307 (TTAB 1975) (the presumptions under Section 7 of the Trademark Act apply to the registered mark).

Finally, applicant argues that the term "CONNOISSEUR" has been registered so often that the addition of the term

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"FLATSCREEN" is a determinative source-identifying difference. See *Knight Textile Corp. v. Jones Investment Co.*, 75 USPQ2d 1313 (TTAB 2005) (NORTON MCNAUGHTON ESSENTIALS allowed to register despite opposition from owner of ESSENTIALS). In this regard, we sustain the examining attorney's objection to the evidence applicant submitted for the first time with its appeal brief, including the evidence regarding third-party registrations. We also hasten to add, however, that even had we considered these few use-based third-party registrations, it would not have changed our decision as only three are active registrations. Third-party registrations may be used to show that a term has been commonly registered for its suggestive meaning. Absent evidence of actual use however, third-party registrations have little probative value because they are not evidence that the marks are in use on a commercial scale or that the public has become familiar with them. See *Smith Bros. Mfg. Co. v. Stone Mfg. Co.*, 476 F.2d 1004, 177 USPQ 462, 463 (CCPA 1973) (the purchasing public is not aware of registrations reposing in the U.S. Patent and Trademark Office). See also *In re Hub Distributing, Inc.*, 218 USPQ 284, 285 (TTAB 1983).

[I]t would be sheer speculation to draw any inferences about which, if any of the marks subject of the third party (sic) registrations are still in use. Because of this doubt, third party (sic) registration evidence proves nothing about the impact of

the third-party marks on purchasers in terms of dilution of the mark in question or conditioning of the purchasers as their weakness in distinguishing source.

In re Hub Distributing, Inc., 218 USPQ at 286.

Meanwhile, we note that even weak marks are entitled to protection against registration of a similar mark for similar goods. See *Giant Food Inc. v. Rosso and Mastracco, Inc.*, 218 USPQ 521 (TTAB 1982).

On the balance, we find that, viewing the marks in their entirety, the dissimilarities of the marks are outweighed by their similarities. Accordingly, we find this *du Pont* factor to weigh in favor of finding a likelihood of consumer confusion.

The Goods and Channels of Trade

In determining the similarity or dissimilarity of the goods, we note that the more similar the marks at issue, the less similar the goods or services need to be for the Board to find a likelihood of confusion. *In re Opus One Inc.*, 60 USPQ2d 1812, 1815 (TTAB 2001). It is only necessary that there be a viable relationship between the goods or services to support a finding of likelihood of confusion. *In re Concordia Int'l Forwarding Corp.*, 222 USPQ 355, 356 (TTAB 1983). Goods or services need not be identical or even competitive in order to support a finding of likelihood of confusion. Rather, it is enough that the goods or services are related in some manner or

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that some circumstances surrounding their marketing are such that they would be likely to be seen by the same persons under circumstances which could give rise, because of the marks used or intended to be used therewith, to a mistaken belief that they originate from or are in some way associated with the same producer or that there is an association between the producers of each parties' goods or services. *In re Melville Corp.*, 18 USPQ2d 1386 (TTAB 1991).

Applicant's identified goods are "home theatre products, namely televisions, LCD televisions, plasma televisions, flat panel televisions and DVD players," while the cited registration includes "sound equipment, namely, loudspeakers." The examining attorney has submitted numerous copies of use-based, third-party registrations covering goods of the type in both the application and the cited registration. Examples are Registration No. 3127341 ("loudspeakers" and "televisions; DVD players"); 3610226 ("loudspeakers" and "televisions"); 3395831 ("loudspeakers" and "televisions; DVD players"); 3600183 ("loudspeakers" and "DVD players"); 3331239 ("loudspeakers" and "DVD players"); 3399884 ("loudspeakers" and "DVD players"); 2864779 ("loudspeakers" and "televisions"); 2932811 ("loudspeakers" and "DVD players"); 3412631 ("loudspeakers" and "televisions; flat panel televisions"); 3185915 ("loudspeakers" and "DVD players"); 3207663 ("loudspeakers" and "DVD players"); and 3677985

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("loudspeakers" and "televisions"). Copies of use-based, third-party registrations may serve to suggest that the goods are of a type which may emanate from a single source. See *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785 (TTAB 1993).

The examining attorney also submitted evidence from various websites to show that various companies, including Sony, Sharp, Panasonic, Bose, Samsung, and Pioneer sell both "loudspeakers," as identified by the cited registration, and either "televisions" (including in some cases more specifically "plasma televisions" or "flat panel televisions") or "DVD players" as identified by the application.

Additionally, there is nothing in the recital of goods in either the cited registration or the application that limits either registrant's or applicant's channels of trade. In the absence of specific limitations in the registration, we must presume that registrant's goods will travel in all normal and usual channels of trade and methods of distribution. *Squirtco v. Tomy Corporation*, 697 F.2d 1038, 216 USPQ 937, 939 (Fed. Cir. 1983). See *In re Linkvest S.A.*, 24 USPQ2d 1716, 1716 (TTAB 1992) (because there are no limitations as to channels of trade or classes of purchasers in either the application or the cited registration, it is presumed that the registration and the application move in all channels of trade normal for those services, and that the services are available to all classes of

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purchasers for the listed services). Since there are no limitations on the channels of trade in applicant's identification of goods either, we must make the same presumption with regard to applicant's goods. In other words, there is nothing that prevents the registrant's loudspeakers from being sold in the same channels of trade and to the same classes of consumers that purchase applicant's televisions and DVD players (and vice versa). Furthermore, since both "loudspeakers" on the one hand, and applicant's various types of "televisions" and its "DVD players" on the other may be used as complementary products, including in "home theatre" systems as specified in applicant's identification of goods, the target consumers of both registrant and applicant may overlap. Accordingly, we find that these *du Pont* factors also weigh in favor of finding a likelihood of consumer confusion.

Consumer Sophistication

Applicant urges us to consider consumer sophistication. In this regard, applicant has submitted evidence of press releases indicating that "NuVision is the premium manufacturer of flat screen TVs for the luxury market," with televisions ranging in price from \$799 to \$12,499. (appl's brochure). Applicant also submitted a Q&A with its vice chairman, David Hester, quoting him as saying, "On average, our jobs run at about 80,000

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dollars, of which 20,000 or 20 percent of that is in video.”
(Luxury DE January 15, 2010).

However, as indicated above, we are bound by the description of goods in the application and the cited registration. *Octocom Systems, Inc. v. Houston Computers Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990) (“[t]he authority is legion that the question of registrability of an applicant’s mark must be decided on the basis of the identification of goods set forth in the application regardless of what the record may reveal as to the particular nature of an applicant’s goods, the particular channels of trade or the class of purchasers to which the sales of goods are directed.” [citations omitted]). Thus, we cannot resort to such extrinsic evidence to restrict the prices of applicant’s or registrant’s goods. *See In re Bercut-Vandervoort & Co.*, 229 USPQ 763, 764 (TTAB 1986) (evidence that relevant goods are expensive wines sold to discriminating purchasers must be disregarded given the absence of any such restrictions in the application or registration). We must presume that both applicant’s televisions and DVD players and registrant’s loudspeakers would be sold at all the usual prices for such goods, which may include relatively inexpensive products sold to average consumers. Accordingly, this factor weighs against applicant.

Conclusion

In summary, we have carefully considered all of the evidence and arguments of record relevant to the pertinent *du Pont* likelihood of confusion factors. We conclude that with similar marks with similar connotations used on similar and complementary goods, travelling through the same or similar channels of trade, there is a likelihood of confusion between applicant's mark FLATSCREEN CONNOISSEUR for the goods for which it seeks registration and the registered mark CONNOISSEUR for the items identified therein.

Decision: The refusal to register is affirmed.