

**THIS OPINION IS NOT A
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THE T.T.A.B.**

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Chevron Ltd.

Serial No. 77737091

Ulrika E. Mattsson of McDermott, Will & Emery LLP for
Chevron Ltd.

Tasneem Hussain, Trademark Examining Attorney, Law Office
105 (Thomas G. Howell, Managing Attorney).

Before Walters, Kuhlke and Cataldo,
Administrative Trademark Judges.

Opinion by Cataldo, Administrative Trademark Judge:

Applicant, Chevron Ltd. filed an application to
register the mark ENDURO in standard characters on the
Principal Register for the following goods (as amended):

portable power tools, namely, angle grinders,
circular saws, drills, drivers, jig saws,
reciprocating saws, rotary tools, routers,
sanders, air compressors, angle grinders,
buffers, caulk guns, cut out saws, fans, planers,
laminare trimmer, electric screwdrivers, power
staplers, vacuums; power tool accessories,
namely, circular saw blades, jig saw blades,
drill bits, driver bits, router bits, router
bushings; benchtop power tools, namely, miter
saws, router tables specially adapted to hold

powered machinery, table saws and tile saws; lawn and garden power tools, namely, string line trimmers, hedge trimmers, grass shears, electric leaf blowers, pole hedge trimmers, chainsaws, pole saws, lawn mowers; lawn and garden power tool accessories, namely, replacement blades, replacement line

in International Class 7.¹

The trademark examining attorney refused registration under Section 2(d) of the Trademark Act on the ground that applicant's mark, as intended to be used on or in connection with its goods, so resembles the mark IC ENDURO, previously registered on the Principal Register in standard characters for "power saw blades" in International Class 7,² as to be likely to cause confusion.

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

Likelihood of Confusion

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

¹ Application Serial No. 77737091 was filed on May 14, 2009 based upon applicant's assertion of its bona fide intent to use the mark in commerce in connection with the goods. Applicant deleted certain goods from its original identification and divided goods not subject to this appeal into a child application.

² Registration No. 3565090 issued on January 20, 2009.

1357, 177 USPQ 563, 567 (CCPA 1973). See also *In re Majestic Distilling Co., Inc.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (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, 27 (CCPA 1976). See also *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531, 1533 (Fed. Cir. 1997).

The Marks

We first consider the similarity of the marks. In this case, applicant's mark, ENDURO, is wholly incorporated by the cited mark, IC ENDURO. As such, applicant's mark is identical in part to the mark in the cited registration in appearance and sound. Likelihood of confusion is often found where the entirety of one mark is incorporated within another. *In re Denisi*, 225 USPQ 624, 626 (TTAB 1985) (PERRY'S PIZZA for restaurant services specializing in pizza and PERRY'S for restaurant and bar services); *Johnson Publishing Co. v. International Development Ltd.*, 221 USPQ 155, 156 (TTAB 1982) (EBONY for cosmetics and EBONY DRUM for hairdressing and conditioner); and *In re South Bend Toy Manufacturing Company, Inc.*, 218 USPQ 479, 480 (TTAB

1983) (LIL' LADY BUGGY for toy doll carriages and LITTLE LADY for doll clothing).

As for the presence of IC in registrant's mark, this term is not sufficient to distinguish applicant's ENDURO mark from the cited IC ENDURO mark given the otherwise identical natures thereof. Consumers are often known to use shortened forms of names, and it is highly likely that registrant and its goods are referred to as ENDURO. Cf. *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 219 (CCPA 1978) (Rich, J., concurring: "the users of language have a universal habit of shortening full names - from haste or laziness or just economy of words"). In this case, the portion of registrant's mark most likely to be remembered by purchasers and users in referring to its goods is ENDURO. This portion of registrant's mark is identical to applicant's mark. With regard to meaning or connotation, both marks suggest strength and resilience in the goods so marked.

Applicant argues that ENDURO is a weak mark entitled to a narrow scope of protection. In support of its position, applicant submitted copies of the following third-party registrations consisting of ENDURO and ENDURO-formative marks:

Registration No. 1848992 ENDURO "gasoline engines not for land use";

Registration No. 1858374 ENDURO "compressor screw elements as machine parts";

Registration No. 2580614 ENDURO "outboard engines and structural parts therefor";

Registration No. 2423392 ENDURO "machine parts, namely, ball and roller bearings";

Registration No. 3055957 ENDURO "mail processing machines; inserters for mail processing machines and user manuals sold as a unit therewith";

Registration No. 2643633 ENDURO MILL (stylized, MILL disclaimed) "power-operated solid carbide rotary tools, namely, end mills";

Registration No. 3352044 ENDURO VAC STINGER (stylized, VAC disclaimed) "commercial and industrial as well as residential robots for cleaning swimming pools";

Registration No. 2148633 ENDURO-FLEX "power operated grinding wheels for grinding and finishing metals";

Registration No. 1780780 ENDURO-FLITE "conveyors and conveyor parts"; and

Registration No. 2089576 ENDURO-FLO "bulk handling equipment, namely, drag conveyors, and parts therefor, specifically excluding chains."³

³ Registration No. 2897906, also relied upon by applicant, subsequently was cancelled under Section 8. A cancelled registration is not evidence of anything except that it issued. See *Time Warner Entertainment Co. v. Jones*, 65 USPQ2d 1650 (TTAB 2002). Any benefits conferred by the registration, including the evidentiary presumptions afforded by Section 7(b) of the Trademark Act were lost when the registration expired. See, e.g., *Anderson, Clayton & Co. v. Krier*, 478 F.2d 1246, 178 USPQ 46 (CCPA 1973).

We note, however, that most of the registrations made of record by applicant identify goods that are not related to the goods recited in either its application or the cited registration. The two registrations that arguable recite related goods are for marks - ENDURO MILL (stylized) and ENDURO-FLEX - that are less similar to the marks in the involved application and cited registration than those marks are to each other. As such, we are not compelled by such evidence to find that ENDURO is a weak mark in the field of portable power tools or power saw blades, or that IC ENDURO should be afforded a narrow scope of protection.

In this case, we find that consumers who are familiar with the mark, IC ENDURO, used in connection with registrant's power saw blades, who then see the mark ENDURO used in connection with applicant's various portable power tools and accessories, including saw blades, are likely to assume that the owner of the IC ENDURO mark has simply deleted the IC portion of its mark when using the mark in connection with power tools. In other words, consumers are likely to view the marks as variations of each other, but indicating a single source. Thus, despite the fact that registrant's mark includes IC, the marks IC ENDURO and ENDURO, taken as a whole, are highly similar in appearance, sound, connotation and commercial impression. Accordingly,

this *du Pont* factor favors a finding of likelihood of confusion.

The Goods

Turning now to our consideration of the identified goods, we observe that applicant's goods include "circular saw blades" and "jig saw blades" which are included among registrant's more broadly identified "power saw blades." In addition, applicant's goods include "circular saws," "reciprocating saws," "cut out saws," and "miter saws" that are commonly understood to be used with registrant's "power saw blades." Thus, on the face of their respective identifications, applicant's goods are encompassed in part by registrant's goods and related in part to those goods.

In addition, the examining attorney has made of record a number of use-based, third-party registrations which show that various entities have adopted a single mark for goods that are identified in both applicant's application and the cited registration. *See, for example:*

Registration No. 2987000 for, *inter alia*, circular saws, miter saws, reciprocating saws, drills, and power saw blades;

Registration No. 2800554 for, *inter alia*, power saw blades and drill bits; and

Registration No. 2629217 for, *inter alia*, bits for power drills, blades for power saws, hand held electric drills, routers and circular saws.

Third-party registrations which individually cover a number of different items and which are based on use in commerce serve to suggest that the listed goods and/or services are of a type which may emanate from a single source. See *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1786 (TTAB 1993). The examining attorney further submitted evidence from commercial Internet web sites suggesting that the same entities provide both applicant's and registrant's types of goods. The following samples are illustrative:

various power saw blades including circular saw blades and jigsaw blades
(www.coastaltool.com);

circular saws, sanders, routers, reciprocating saws, grinders, and various power saw blades
(www.skiltools.com); and

drills, routers, grinders, sanders, circular saws, reciprocating saws, and blades for power saws,
(www.boschtools.com).

Based upon the face of the respective identifications of goods and the evidence made of record by the examining attorney, we find that applicant's goods are encompassed in part by those of registrant and otherwise related. This factor, therefore, favors a finding of likelihood of confusion.

Channels of Trade

It is settled that in making our determination regarding the channels of trade, we must look to the goods as identified in the involved application and cited registration. See *Octocom Systems, Inc. v. Houston Computers Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990). See also *Paula Payne Products v. Johnson Publishing Co.*, 473 F.2d 901, 177 USPQ 76, 77 (CCPA 1973). In this case, inasmuch as neither applicant's nor registrant's identification of goods recites any specific limitations to the channels of trade in which the goods move or are intended to move, we presume an overlap and that the goods would be offered in all ordinary trade channels for these goods and to all normal classes of purchasers. See *In re Linkvest S.A.*, 24 USPQ2d 1716 (TTAB 1992).

Summary

Neither applicant nor the examining attorney has discussed any of the remaining *du Pont* factors. We note, nonetheless, that none seems to be applicable, inasmuch as we have no evidence with respect to them.

In light of the foregoing, we conclude that consumers familiar with registrant's goods sold under his above-referenced mark would be likely to believe, upon encountering applicant's goods rendered under his mark that

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the goods originated with or are associated with or sponsored by the same entity.

Decision: The refusal to register is affirmed.