

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

Mailed:
September 30, 2011

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re CSI Collision Specialist, Inc.

Serial No. 77797115

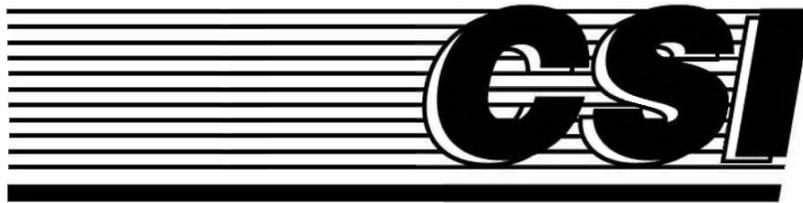
John J. Edmonds of Collins, Edmonds & Pogorzelski for CSI
Collision Specialist, Inc.

Brian P. Callaghan, Trademark Examining Attorney, Law Office 108
(Andrew Lawrence, Managing Attorney).

Before Bucher, Bergsman and Ritchie, Administrative Trademark
Judges.

Opinion by Ritchie, Administrative Trademark Judge:

CSI Collision Specialist, Inc. ("applicant") filed an
application to register the mark shown below:



for services identified as "vehicle body repair services," in
International Class 37:¹

¹ Serial No. 77797115, filed August 4, 2009, pursuant to Section 1(a) of the Trademark Act, 15 U.S.C. §1051(a), claiming dates of first use and first use in commerce on December 2, 1984. The application contains the following description of the mark: "The mark consists of the letters 'CSI' with horizontal lines and a horizontal bar."

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The Trademark Examining Attorney refused registration of 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 so resembles the registered mark CSI, in typed drawing form, for "repair and maintenance of gas engines, gas compression equipment, electronic ignition, control equipment, lubrication and emission control equipment," in International Class 37,² 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. For the reasons discussed herein, the Board reverses 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,

² Registration No. 2260941, issued July 13, 1999; Sections 8 and 15 affidavits accepted and acknowledged. Renewed.

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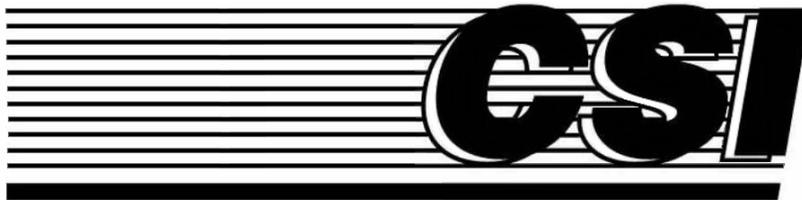
29 (CCPA 1976) ("The fundamental inquiry mandated by §2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks").

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 solely of the letters CSI. Applicant argues that these letters are merely initials, standing for registrant's full name, Compressor Systems, Inc.

Nonetheless, as to the inherent strength of the letters "CSI," this portion of registrant's mark is arbitrary for the services in registrant's recital of services, which are "repair and maintenance of gas engines, gas compression equipment, electronic ignition, control equipment, lubrication and emission control equipment."

Applicant's mark consists also of the letters "CSI," with a design feature:



However, the design, consisting of simply straight lines or bars around the letters, does not detract from the literal portion of the mark. Rather, it is less significant, since consumers are likely to call for, or refer to, the goods by their

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name. *CBS Inc. v. Morrow*, 708 F.2d 1579, 218 USPQ 198, 200 (Fed. Cir. 1983); *In re Dakin's Miniatures Inc.*, 59 USPQ2d 1593, 1596 (TTAB 2001); *In re Appetito Provisions Co., Inc.*, 3 USPQ2d 1553, 1554 (TTAB 1987).

Accordingly, "CSI" is the dominant term in applicant's mark. *In re National Data Corp.*, 753 F.2d 1056, 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 highly similar connotations and commercial impressions; specifically, if the services are deemed to be related, consumers may mistakenly believe that CSI and design is a derivative of the CSI line of services.

Turning next to the question of the similarity or dissimilarity of the services at issue here, services need not be identical or even competitive in order to support a finding of likelihood of confusion. Rather, it is enough that the services are related in some manner or 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

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between the producers of each parties' services. *In re Melville Corp.*, 18 USPQ2d 1386 (TTAB 1991). Moreover, under the facts of this case, we note that the more similar the marks, 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).

Applicant's identified services are "vehicle body repair services," while the cited registration includes "repair and maintenance of gas engines, gas compression equipment, electronic ignition, control equipment, lubrication and emission control equipment." It is well-established by our precedent that we must compare the services *as described* in the application with the services *as described* in the cited registration. *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001, 1004 (Fed. Cir. 2002) (finding likelihood of confusion "as a matter of law" based upon a comparison of the parties' identifications, although they involved different goods and services within the fields of technology); *see also Octocom Systems, Inc. v. Houston Computers Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990) ("The 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

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or the class of purchasers to which the sales of goods are directed." (citations omitted).

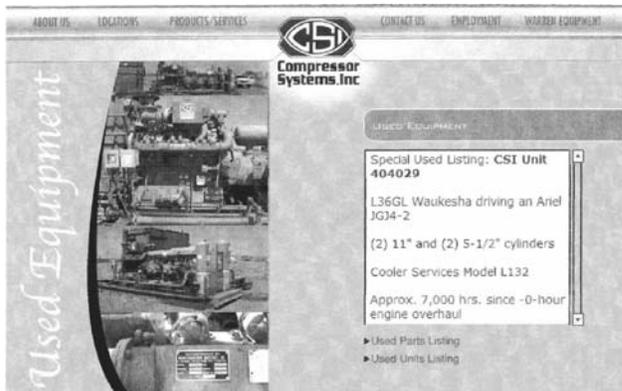
The examining attorney submitted evidence of third-party registrations and websites to show the relatedness of the services at issue in this proceeding. However, all of the evidence submitted by the examining attorney refers to services related to "automobile engines." None of the services refers to "automobile engines" as "gas engines." Applicant asserts that the term "gas engines" as it appears in registrant's recitation of services, is unclear, and that, upon further reflection it does not encompass gasoline engines for automobiles. We agree. This is exactly the situation contemplated by the Board in *In re Trackmobile Inc.*, 15 USPQ2d 1152 (TTAB 1990). There, the Board considered "extrinsic evidence" submitted by the applicant in order to properly interpret the goods identified in the cited registration. As the Board there stated, "when the description of goods for a cited registration is somewhat unclear, as is the case herein, it is improper to simply consider the description in a vacuum and attach all possible interpretations to it when the applicant has presented extrinsic evidence showing that the description of goods has a specific meaning to members of the trade. (cites omitted)." *Id.* at 1154.

As applicant here points out, the first portion of registrant's recitation of services is "repair and maintenance of

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gas engines, gas compression equipment . . .” Viewed in the context of industrial services involving gas production, pumping and compression, in Midland, Texas, where registrant is based, this suggests that these “gas engines” are not “automobile engines.” Hence, in a case like this, it is appropriate that we turn to the extrinsic evidence presented by applicant as to the services involving industrial “gas engines” and “gas compression equipment” offered by registrant:³

Registrant provides field service for all kinds of compression equipment, including engines for gas compression →



Registrant makes specific reference to Waukesha® gas engines as well as CAT® engines for gas compression →



← Registrant sells used equipment, including overhauled engines for gas compression



We find, based upon this evidence, that the term “repair and maintenance of . . . gas engines” in the cited recital of services refers to industrial gas engines. With that definition

³ <http://www.compressor-systems.com/compressors.html>, as accessed by applicant on May 6, 2010, Response to Office Action, pp. 13, 14 and 20 of 27.

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of the services recited in the cited registration, we find that the examining attorney has failed to show any relatedness between "repair and maintenance of . . . gas engines" and the "vehicle body shop repair services" for which applicant seeks registration. Neither has the examining attorney shown relatedness with any of the other services recited in the cited registration. Simply put, the examining attorney failed to show the relatedness of any of the services recited in the cited registration with the services recited in the application.

Based on the current record, we find an insufficient likelihood of confusion. Accordingly, despite the similarity of the marks, we find, as in *In re Trackmobile*, that based on the examining attorney's failure to prove the similarity of the services at issue, "[t]he better approach in this particular situation . . . is to authorize publication of the mark for opposition" (cites omitted). *In re Trackmobile*, 15 USPQ2d at 1154. See also *In re W.W. Henry Co.*, 82 USPQ2d 1213 (TTAB 2007) (evidence accepted to show registrant's goods would be used by industrial plastics manufacturers, not handypersons).

Decision: The refusal to register is reversed.