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UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Fleetwood Enterprises, Inc.

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Serial No. 78579524

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Edward M. Prince of Alston & Bird LLP for Fleetwood Enterprises, Inc.

Matthew Kline, Senior Attorney, Law Office 106 (Mary I. Sparrow, Managing Attorney).<sup>1</sup>

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Before Sams, Chief Administrative Trademark Judge, Rogers and Walsh, Administrative Trademark Judges.

Opinion by Walsh, Administrative Trademark Judge:

Fleetwood Enterprises, Inc. (applicant) has filed an application to register the mark ROYALE in standard characters on the Principal Register for goods identified as "folding camping trailers" in International Class 12.<sup>2</sup> The Examining Attorney has finally refused registration

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<sup>1</sup> A different examining attorney was responsible for this application prior to the oral argument in the case.

<sup>2</sup> Application Serial No. 78579524, filed March 3, 2005, claims a bona fide intention to use the mark in commerce under Trademark Act Section 1(b), 15 U.S.C. § 1051(b).

**Serial No. 78579524**

under Trademark Act Section 2(d), 15 U.S.C. § 1052(d), based on a likelihood of confusion with Registration No. 2917194 for the mark ROYAL CARGO in standard characters for "[t]railers and transportation equipment, namely, stock trailers, horse trailers, utility trailers, flatdeck trailers, truck decks, enclosed cargo trailers for the transportation of snowmobiles, automobiles and other equipment, and cargo trailers" in International Class 12. The cited registration issued January 11, 2005. The cited registration claims first use of the mark anywhere and first use of the mark in commerce on February 1, 2000 and includes a disclaimer of "CARGO."

Applicant has appealed. Applicant and the Examining Attorney have filed briefs and presented arguments at an oral hearing. We reverse.

Section 2(d) of the Trademark Act precludes registration of an applicant's mark "which so resembles a mark registered in the Patent and Trademark Office... as to be likely, when used on or in connection with the goods of the applicant, to cause confusion..." 15 U.S.C. § 1052(d). The opinion in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1977) sets forth the factors to consider in determining likelihood of confusion. Accordingly, we have considered each of the factors as to

which applicant or the Examining Attorney presented arguments or evidence. In this case, there is no one factor which is dominant in the likelihood-of-confusion analysis. Rather, a combination of factors, taken together, lead us to conclude that there is not a likelihood of confusion in this case.

The Marks

In discussing the marks, applicant first discusses the sixth *du Pont* factor, that is, "the number and nature of similar marks in use on similar goods," and, more generally the strength of the cited mark. *In re E. I. du Pont de Nemours & Co.*, 177 USPQ at 567. Applicant argues that the cited mark ROYAL CARGO is weak, and as such, only entitled to a narrow scope of protection. On the other hand, the Examining Attorney has argued that applicant has failed to establish that ROYAL CARGO is weak, and furthermore that even weak marks are entitled to protection.

In support of its argument that the cited mark is weak, applicant notes that, in the first Office action in the case, the Examining Attorney had based the refusal under Section 2(d) not only on the cited registration for the ROYAL CARGO mark, but also on two additional registrations: Registration No. 1562070 for the mark ROYALE for "motor vehicles, namely, automobiles, engines

therefor, and structural parts thereof"; and Registration No. 2140117 for the mark ROYAL for "truck bodies for on road vehicles." Three different parties own the three registrations cited originally. The Examining Attorney later withdrew the latter two registrations as bases for the Section 2(d) refusal. The withdrawal notwithstanding, applicant argues that these two registrations for ROYAL and ROYALE for similar goods have coexisted demonstrating that "ROYAL" is weak and that ROYAL and ROYALE are not confusingly similar.

Applicant has also provided copies of twenty-six active registrations for marks which include either ROYAL or ROYALE for a wide range of goods to show that ROYAL/ROYALE is weak. These registrations, include, for example: Registration No. 652140 for the mark ROYAL for cookies; Registration No. 360030 for the mark ROYALE for playing cards; Registration No. 1707629 for the mark ROYAL for sensitized photographic paper; Registration No. 1212386 for the mark ROYALE for toilet paper and paper towels; Registration No. 979759 for the mark ROYAL for aluminum foil; Registration No. 1349470 for the mark ROYALE for sheets, pillow cases, comforters, bedspreads and towels; and Registration No. 1450432 for ROYAL SOUND for automobile stereo systems.

Applicant has also submitted copies of numerous registrations for ROYAL and ROYALE which have either expired or been canceled. Dead registrations, however, have little or no probative value. *In re Phillips-Van Heusen Corp.*, 63 USPQ2d 1047, 1048 (TTAB 2002).

With its request for reconsideration, applicant also provided listings of results from searches it conducted of USPTO application and registration records showing 189 records for active applications and registrations for marks which include ROYALE and 1,787 active applications and registrations for marks which include ROYAL.

As a general rule, the Board will not consider a mere listing of applications or registrations, and the Board will not take judicial notice of USPTO records. *In re Duofold Inc.*, 184 USPQ 638 (TTAB 1974). Applicants must submit copies of USPTO paper or electronic records. In this case, however, the Examining Attorney failed to advise applicant of these requirements when responding to the request for reconsideration. Under the circumstances present here, we will consider the information applicant provided because the Examining Attorney failed to advise applicant in a timely manner of the requirements related to making USPTO records properly of record. *See In re Hayes*, 62 USPQ2d 1443, 1443 n.3 (TTAB 2002). Nonetheless, these

listings have limited probative value because the listings only show application and/or registration numbers, the marks and status (live or dead). Among other things, the listings do not indicate the goods and services.

Furthermore, even if copies of the records related to the pending applications had been submitted, the applications serve no evidentiary purpose other than to show that they were filed. *In re Phillips-Van Heusen Corp.*, 63 USPQ2d 1047, 1049 n.4 (TTAB 2002); *Glamorene Products Corp. v. Earl Grissmer Co., Inc.*, 203 USPQ 1090, 1092 n. 5. (TTAB 1979).

Copies of third-party registrations may serve to show, in the nature of a dictionary definition, how language is used. *Specialty Brands, Inc. v. Coffee Bean Distributors Inc.*, 748 F.2d 669, 223 USPQ 1281, 1285-86 (Fed. Cir. 1984). Thus, third-party registrations may be relevant to show that a term is descriptive or suggestive such that the public will look to other elements to distinguish the marks. *See Tektronix, Inc. v. Daktronics, Inc.*, 53 F.2d 915, 189 USPQ 693 (CCPA 1976).

In this case, we have the benefit of both dictionary evidence and third-party registrations. We looked to the dictionary to see whether ROYALE or ROYAL has a suggestive meaning in this context. *Merriam-Webster's Collegiate*

*Dictionary*, (Eleventh ed. 2003) defines "royal," in relevant part, as follows: "3:a of superior size, magnitude or quality."<sup>3</sup> *Cassell's French-English English-French Dictionary* (Fifth revised ed. 1951) identifies "royale" as the feminine form of the adjective "royal" with the English meaning of "royal."<sup>4</sup> Therefore, for purposes of our consideration of the meaning and strength of the marks we treat "ROYALE" and "ROYAL" as equivalent. *In re Thomas*, 79 USPQ2d 1021 (TTAB 2006).

In this case, we have a dictionary definition which shows that ROYAL generally suggests quality. We also have in the record the third-party registrations, cited in the first Office action, for ROYAL and ROYALE marks for goods in the same general category as those at issue here, such as motor vehicles and motor vehicle parts. The dictionary definitions and third-party registrations indicate a suggestive meaning for the terms ROYAL and ROYALE for those goods. In addition, we have in the record third-party registrations for ROYAL and ROYALE for a wide range of other goods generally confirming the suggestive meaning of the marks at issue. *The Murray Corp. of America v. Red*

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<sup>3</sup> The Board may take judicial notice of dictionary definitions. See *University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co., Inc.*, 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

<sup>4</sup> *Id.*

*Spot Paint and Varnish Co., Inc.*, 280 F.2d 158, 126 USPQ 390, 392 (CCPA 1960) (EASY held suggestive as applied to paint in view of third-party registrations and excerpts from a trademark directory). Accordingly, we conclude, based on this record, that ROYAL/ROYALE is somewhat suggestive, and as such, entitled to a more limited scope of protection than otherwise might apply.

We now turn to a comparison of the marks themselves. In comparing the marks we must consider the appearance, sound, connotation and commercial impression of the marks at issue. *Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005).

Applicant argues both that the distinction in spelling, ROYALE versus ROYAL, and the inclusion of CARGO in the cited mark serves to distinguish the marks. The Examining Attorney, on the other hand, argues that the difference in spelling is inconsequential and that the presence of the disclaimed term "CARGO" in the cited mark does nothing to distinguish the marks.

Applicant attempts to use third-party registrations for both ROYAL and ROYALE marks owned by different parties for similar goods to show that the USPTO previously considered the two words/spellings distinguishable. As we



discussed above, applicant has noted the two coexisting registrations originally cited by the Examining Attorney for ROYAL and ROYALE marks, both for motor vehicle parts. Among the further examples, applicant points to are active Registration No. 652140 for the mark ROYAL for "cookies" and canceled Registration No. 1321039 for the mark ROYALE also for "cookies" which coexisted for a time. Applicant provided seven such examples of coexisting registrations. We find this evidence and these arguments generally unpersuasive. We must decide each case on the record before us; decisions on prior applications do not dictate a particular decision here. *In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564 (Fed. Cir. 2001). Furthermore, to the extent that these examples rely on canceled or expired registrations, and nearly all of them do, the records have little or no probative value. *In re Phillips-Van Heusen Corp.*, 63 USPQ2d at 1048.

Nonetheless, we conclude that the difference in spelling between ROYALE and ROYAL, is of some importance in distinguishing the marks of the parties. The difference in spelling results in a minor difference in appearance and a difference in pronunciation which is subtle but significant. There is also a subtle difference in

connotation and commercial impression between the spellings -- ROYALE connotes something "continental" or rare.

There is one additional distinction between the marks, namely, the inclusion of "CARGO" in the cited mark. In our comparison, we must view the marks in their entireties; in that comparison we recognize that disclaimed, descriptive terms are generally less important. *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985). On the other hand, we cannot ignore a disclaimed term entirely and, in a case such as this, where the only other element in the cited mark is both weak and somewhat different, the descriptive term may play a significant role in distinguishing the marks overall. *The Murray Corp. of America v. Red Spot Paint and Varnish Co., Inc.*, 126 USPQ at 392 (EASY for touch-up enamel supplied in self-spraying containers for application to domestic laundry and other appliances held not likely to be confused with EASYTINT for white paint particularly constructed to be mixed with various colors as desired). See also *Knight Textile Corp. v. Jones Investment Co.*, 75 USPQ2d 1313 (TTAB 2005); *Steve's Ice Cream v. Steve's Famous Hot Dogs*, 3 USPQ2d 1477 (TTAB 1987); *Kayser-Roth Corp. v. Morris & Co., Inc.*, 164 USPQ 153 (TTAB 1969).

It is the combination of the differences in the pronunciation, connotation and commercial impression of ROYALE versus ROYAL and the presence of CARGO in the cited mark, taken together, which lead us to conclude that the marks are different. Accordingly, in this case, we conclude that, when the marks are viewed in their entireties, they are more dissimilar than similar, particularly when we consider the marks along with the other factors discussed below.

The Goods and Channels of Trade

The goods in the application and the cited registration need not be identical to find a likelihood of confusion under Section 2(d) of the Trademark Act. They need only be related in such a way that the circumstances surrounding their marketing would result in relevant consumers mistakenly believing that the services originate from the same source. *In re International Telephone & Telegraph Corp.*, 197 USPQ 910, 911 (TTAB 1978). *See also On-Line Careline Inc. v. America Online Inc.*, 229 F.3d 1080, 56 USPQ2d 1471 (Fed. Cir. 2000).

Applicant identifies its goods as "folding camping trailers." The goods identified in the cited registration are "[t]railers and transportation equipment, namely, stock trailers, horse trailers, utility trailers, flatdeck

trailers, truck decks, enclosed cargo trailers for the transportation of snowmobiles, automobiles and other equipment, and cargo trailers." The Examining Attorney states, "The registrant offers a variety of trailers, which may or may not include camping trailers." Examining Attorney's Brief at 7. Applicant disagrees with the Examining Attorney's assessment of the scope of the goods identified in the cited registration. Applicant argues that its goods and the goods identified in the cited registration are different, in particular, that they are used for different purposes. Applicant explains, "a camping trailer includes a fold-up tent in which someone camps or sleeps. ... There is no reference whatsoever to camping trailers in the registrant's goods. ... A camping trailer is not considered transportation equipment in the sense of carrying cargo. Applicant's goods do not encompass registrant's goods, nor do registrant's goods encompass applicant's goods." Applicant's Reply Brief at 4-5.

Applicant also challenges the Examining Attorney's assertions that the respective goods are marketed in the same manner, that they would appeal to the same consumers, and that they are both likely to be seen in magazine advertisements, radio and print advertisements. Applicant

argues, we think correctly, that the Examining Attorney offers these assertions without support.

To support the position that the goods are related, the Examining Attorney provided copies of third-party registrations which the Examining Attorney asserts include applicant's goods as well as goods identified in the cited registration. In the brief the Examining Attorney directs our attention to six of these registrations:

Registration No. 1563256 for "recreational vehicles namely, camping trailers and cargo trailers";

Registration No. 2927960 for "trailers, namely, bulk hauling trailers, camping trailers, cargo trailers, semi-trailers, equine trailers, livestock trailers, motorsports trailers, and automobile trailers";

Registration No. 2793378 for "motor vehicles, namely; automobiles and structural parts therefore (sic); axle-brake assemblies for camping trailers, cargo trailers, refrigerated trailers, travel trailers, low-bed trailers and trucks";

Registration No. 2369914 "recreational vehicles, namely, campers, travel trailers, camping trailers, motor homes, mini motor homes; cargo trailers; truck caps; trailer hitches; and structural parts for all of the above";

Registration No. 2361764 for "recreational vehicles, namely, campers, travel trailers, camping trailers, motor homes; mini motor homes; cargo trailers; truck caps; trailer hitches; and structural parts for all of the above"; and

Registration No. 2374643 for "recreational vehicles, namely, campers, travel trailers,

camping trailers, motor homes, mini motor homes;  
cargo trailers; truck caps; trailer hitches;  
structural parts for all the above."

We note that the latter three registrations are for related marks owned by the same party. Registration No. 2793378 includes "axle-brake assemblies for camping trailers..." but not camping trailers or "folding camping trailers."

First, we concur with applicant's assertion that the goods identified in the cited registration do not include "folding camping trailers" as the Examining Attorney suggests they may. We see no basis for this construction of the identification. Accordingly, we conclude that the goods of applicant and registrant, as identified, are not the same or overlapping.

Furthermore, under the particular circumstances of this case, without further evidence, we cannot and do not assume that the respective goods move in the same trade channels. Here again, we concur with applicant's assertion that the goods of applicant and registrant, as identified, differ in purpose. Furthermore, the difference in purpose, namely, the use of applicant's goods as shelter while camping, as opposed to the use of the goods in the cited registration to haul cargo, may very well mean that the

goods are marketed through distinct channels of trade. Accordingly, in this case, where we find that the goods identified in the application and the cited registration differ significantly in their nature and purpose, we decline to presume that the goods would move in the same channels of trade. *Cf. Canadian Imperial Bank v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987); *In re Smith and Mehaffey*, 31 USPQ2d 1531 (TTAB 1994).

In sum, based on this record we conclude that there are differences between applicant's goods and the goods identified in the cited registration, and more importantly, likely differences in the channels of trade for the goods.

#### The Purchasing Conditions

Applicant also argues that its goods are quite expensive and that the purchase of the goods will not be casually undertaken. The Examining Attorney disagrees and argues further that even sophisticated purchasers may be subject to trademark confusion.

It is obvious that, due to their cost, the trailers at issue here of both general types are not subject to purchase on impulse, but rather that some degree of care would attend such a purchase. While the purchasers may include the general public, we conclude that the nature of the purchase, along with the other factors we have

discussed here, would serve to diminish any likelihood of confusion. Accordingly, we conclude that the conditions of sale in this case tend to support the conclusion that there would not be a likelihood of confusion.

Conclusion

Finally, based on all evidence of record in this case related to the *du Pont* factors, we conclude that there would not be a likelihood of confusion between applicant's ROYALE mark used in connection with "folding camping trailers" and the registered mark ROYAL CARGO used in connection with "[t]railers and transportation equipment, namely, stock trailers, horse trailers, utility trailers, flatdeck trailers, truck decks, enclosed cargo trailers for the transportation of snowmobiles, automobiles and other equipment, and cargo trailers." We conclude so based on the cumulative effect of differences in the marks, differences in the goods and channels of trade for the goods and the conditions of purchase.

**Decision:** We reverse the refusal under Section 2(d).