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Mailed: December 10, 2009

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re L-3 Communications Corp.

Serial No. 78706879

Edward P. Kelly of Tiajolloff & Kelly for L-3 Communications Corp.

Nelson B. Snyder III, Trademark Examining Attorney, Law Office 107 (J. Leslie Bishop, Managing Attorney).

Before Hairston, Grendel and Taylor, Administrative Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

An application was filed by L-3 Communications Corp. to register the mark PEBBLE (standard character format) for "signal intelligence system comprised of satellites, satellite receivers, radio receivers and computer hardware for remotely detecting and monitoring radio frequency activity" in International Class 9.¹

¹ Application Serial No. 78706879, filed on September 5, 2005, based upon applicant's assertion of its bona fide intent to use the mark in commerce.

The trademark examining attorney refused to register applicant's mark under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark, when used in connection with applicant's goods, so resembles the previously registered mark PEBL for, inter alia, "two-way radios," "radio receivers," "radio transceivers," "computer software and programs used for transmission and reproducing and receiving of sound, images, video and data over a telecommunications network and system between terminals and for enhancing and facilitating use and access to computer networks and telephone networks," and "computer software for sending and receiving short messages and electronic mail and for filtering non-text information from the data,"² as to be likely to cause confusion.

When the refusal was made final, applicant appealed. Applicant and the examining attorney have filed briefs. We reverse the refusal.

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 bearing

² Registration No. 3412719, issued on April 15, 2008. Although the registration covers many other items, it is clear from the examining attorney's brief, at p. 2, that the refusal to register is based on the listed goods.

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on the likelihood of confusion issue. See *In re E.I. du Pont de Nemours and Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). See also *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689 (Fed. Cir. 2005); *In re Majestic Distilling Co., Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003); and *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997). In any likelihood of confusion analysis, however, two key considerations are the similarities between the marks and the similarities between the goods. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976).

We turn first to a comparison of the marks, i.e., whether the respective marks are similar or dissimilar when viewed in their entireties in terms of appearance, sound, connotation and commercial impression. See *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, *supra*. The test under the first *du Pont* factor is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their overall commercial impression that confusion as to the source of the goods offered under the respective marks is likely to result.

The examining attorney argues that the marks PEBBLE and PEBL are identical in sound and highly similar in appearance and commercial impression. The examining attorney submitted excerpts from two reviews of registrant's PEBL products. In both instances, the reviewers indicate that registrant's PEBL mark is pronounced as "pebble":

"The Motorola PEBL (pronounced pebble) is being billed as the next generation ..." (<http://www.mobiletracker.net>); and "Motorola enjoyed substantial sales figures for their original PEBL (pronounced pebble) collection ..." (<http://ezinearticles.com>).

Applicant, on the other hand, maintains that the marks do not look alike and do not have the same meaning; that the word PEBBLE has the specific meaning of a small stone, while PEBL has no such meaning; that PEBL does not evoke the word PEBBLE; and that PEBL is not an abbreviation or unique spelling of the word PEBBLE.

Regarding the pronunciation of the marks, registrant's mark PEBL can be pronounced "pebble" and, therefore, the marks can be pronounced identically. Indeed, the Internet evidence indicates that the mark is pronounced as "pebble." We also point out that there is no correct way to pronounce a trademark. See *In re Belgrade Shoe*, 411 F.2d 1352, 162

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USPQ 227 (CCPA 1969) and *Interlego AG v. Abram/Gentile Entertainment Inc.*, 63 USPQ2d 1862 (TTAB 2002). In terms of appearance, the only difference in the marks is the additional "L" and "E" letters in applicant's mark.

With respect to meaning and commercial impression, neither mark appears to have any specific meaning or significance in connection with the respective goods. However, because registrant's mark PEBL may be pronounced as "pebble," its meaning and commercial impression may be identical to applicant's mark PEBBLE.

Thus, when we consider the marks in their entireties, we find that they are similar.

We next compare applicant's goods with those of registrant. It is not necessary that the goods be identical or even competitive in order to support a finding of likelihood of confusion. Rather, it is sufficient that the goods are related in some manner, or that the circumstances surrounding their marketing are such that they would be likely to be encountered by the same persons in situations that would give rise, because of the marks used thereon, to a mistaken belief that they originate from or are in some way associated with the same source or that there is an association or connection between the sources of the respective goods. *In re Melville Corp.*, 18 USPQ2d

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1386 (TTAB 1991); *In re International Telephone & Telegraph Corp.*, 197 USPQ2d 910 (TTAB 1978).

Furthermore, in making our determination as to the relatedness of the goods, we 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) ("Trademark cases involving the issue of likelihood of confusion must be decided on the basis of the respective descriptions of goods.")

The examining attorney maintains that the respective goods are related because the communications equipment listed in the cited registration is typically part of a signal intelligence system, such as applicant's. In support of his position, the examining attorney made of record third-party registrations for intelligence gathering systems which show that such systems are comprised of, inter alia, antennas, transmitters, receivers, computers, and computer software. For example, Registration No. 1279663 covers "electronic reconnaissance systems comprised of antennas, computers ...;" Registration No. 2248611 covers "signals intelligence/electronic warfare collection,

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analysis and signals exploitation systems comprising antennas, receivers ...;" Registration No. 2837711 covers "electronic reconnaissance systems consisting of antennas, computers,... computer software to operate and control electronic reconnaissance systems;" Registration No. 2193293 covers "airborne surveillance and reconnaissance systems, comprising signal processors ... receivers;" and Registration No. 2223650 covers "signals intelligence/electronic warfare collection, analysis and signals exploitation systems comprising ... receivers ... computers for use in signals intelligence and electronic warfare." As additional evidence to support his contention that the respective goods are related, the examining attorney points to applicant's ownership of Registration No. 2531073 for the mark L3 COMMUNICATIONS for communications equipment used in intelligence gathering, e.g., computer hardware and software, satellite equipment, transceivers, and radio transmitters and receivers; and applicant's website which lists a "mobile ground-based tactical signal intelligence system," "antenna," "transceiver," "microwave antenna," and "modem," among applicant's "Products & Services."

Applicant, however, argues that the respective goods are not related and serve different functions.

Specifically, applicant contends that:

The goods of each of the respective marks are quite different. Applicant's goods are part of a signal intelligence system for remotely detecting and monitoring radio frequency signals. A signal intelligence system intercepts radio frequency signals for the purpose of identifying the location from which such signals emanate. The system is used for instance during warfare conditions to identify the position of enemy locations. The goods of the cited registration which are individual communication devices clearly do not provide the function of those identified in Applicant's application.

(Request for Reconsideration, p. 3).

Furthermore, applicant maintains that it "deal[s] within the defense industry," that the purchasers of its signal intelligence system are careful and sophisticated, and extended negotiations are generally necessary to consummate the sale of its goods. (Brief, p. 9).

Applicant's goods are identified as a "signal intelligence system comprised of satellites, satellite receivers, radio receivers and computer hardware for remotely detecting and monitoring radio frequency activity." Registrant's goods are "two-way radios," "radio receivers," "radio transceivers," "computer software and programs used for transmission and reproducing and receiving of sound, images, video and data over a

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telecommunications network and system between terminals and for enhancing and facilitating use and access to computer networks and telephone networks," and "computer software for sending and receiving short messages and electronic mail and for filtering non-text information from the data." The examining attorney's evidence does not persuade us the respective goods are related. The third-party registrations do not show that purchasers would expect a common source for a signal intelligence system and the individual components of such a system. At best, the registrations show that a signal intelligence system typically consists of, for example, receivers and computer software. However, the mere fact that applicant's signal intelligence system may include registrant's types of goods does not automatically make applicant's signal intelligence system related to registrant's goods. Furthermore, although applicant's website lists both a signal intelligence system and individual components of the system, we do not find this limited evidence persuasive to show that purchasers would expect a common source for a signal intelligence system and the individual components thereof.

With respect to the conditions under which and buyers to whom sales of the respective goods are made, in the

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absence of any limitations in the identification of goods in the cited registration, we must presume that registrant's goods are purchased by all the normal classes of purchasers, including the general public. Insofar as applicant's goods are concerned, we recognize that there are no specific limitations in the identification of goods in applicant's application in terms of the classes of purchasers. Also, applicant submitted no evidence to support its contentions with regard to the conditions under which and buyers to whom sales of its goods are made. However, we note that the examining attorney submitted the following definition of the term "*signals intelligence*" from the website www.dtic.mil: "*A category of intelligence comprising either individually or in combination all communications intelligence, electronic intelligence, and foreign instrumentation signals intelligence, however, transmitted.*" Based on this definition, we believe it is reasonable to conclude that applicant's signal intelligence system is a highly specialized product which would be purchased after careful consideration by sophisticated and discriminating purchasers employed by government defense and intelligence agencies.

Thus, we find that the record does not establish that the applicant's and registrant's goods are related such

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that, if identified by confusingly similar marks, prospective purchasers would believe that the goods emanate from the same source. The highly specialized nature of applicant's goods and the fact that such goods would be purchased by knowledgeable purchasers would further obviate any likelihood of confusion.

We conclude that despite the similarity of applicant's mark and registrant's mark, the examining attorney has not established that their contemporaneous use on the goods involved in this case, is likely to cause confusion as to the source or sponsorship of such goods.

Decision: The refusal to register under Section 2(d) is reversed.