

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

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October 7, 2009  
Bucher

**UNITED STATES PATENT AND TRADEMARK OFFICE**

**Trademark Trial and Appeal Board**

In re Trinity Episcopal Church of Baton Rouge

Serial No. 78978631

R. Bennett Ford, Jr. of Roy Kiesel Keegan & Denicola for  
Trinity Episcopal Church of Baton Rouge.

David Yontef, Trademark Examining Attorney, Law Office 105  
(Thomas G. Howell, Managing Attorney).

Before Quinn, Bucher and Rogers, Administrative Trademark  
Judges.

Opinion by Bucher, Administrative Trademark Judge:

Applicant seeks registration on the Principal Register  
of the following mark:

**III**  
**TRINITY**

for services recited in the application as "charitable fund  
raising" in International Class 36.<sup>1</sup>

<sup>1</sup> The original, multiclass application, Serial No. 78880442, was filed by Trinity Episcopal Church of Baton Rouge on May 10, 2006, and included goods and services in five classes

This case is now before the Board on appeal from the final refusal of the Trademark Examining Attorney to register this designation based upon Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d). The Trademark Examining Attorney has found that applicant's mark, when used in connection with the recited services, so resembles the following mark



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(International Classes 21, 25, 36, 41 and 42 (as applied)). Applicant requested division of the application on April 16, 2007, and on May 30, 2007, the U. S. Patent and Trademark Office created, among others, Application Serial No. 78978631 for the involved services in International Class 36.

The parent application resulted in Registration No. 3451216 (International Classes 25 and 41), issued on June 17, 2008; one of the new child applications issued as Registration No. 3559192 (International Class 45 (as registered)) on January 6, 2009; and child Application Serial No. 78978633 for beverage ware in International Class 21 was abandoned after the Board affirmed a refusal under Section 2(d) of the Lanham Act based upon three cited registrations owned by two different entities (Reg. Nos. 1642057, 2273474 and 2762101), for marks shown at right, registered in connection with identical collateral beverage products (TTAB, August 14, 2008).



TRINITY UNIVERSITY  
TRINITY CHRISTIAN  
COLLEGE

<sup>2</sup> Registration No. 3339252 issued on November 20, 2007, is currently owned by Trinity Youth Services.

registered in connection with "charitable fund-raising services to raise funds for foster care services, residential treatment, and education programs for children," also in International Class 36, as to be likely to cause confusion, to cause mistake or to deceive.

The Trademark Examining Attorney and applicant have filed briefs in the case.

We reverse the refusal to register.

The Trademark Examining Attorney contends that inasmuch as applicant has conceded that the charitable fund raising services of registrant and applicant are legally identical, they would be promoted and sold through the same channels of trade to the same classes of ordinary consumers, and that all of these related *du Pont* factors weigh heavily against applicant. The Trademark Examining Attorney argues that the word "Trinity" dominates both marks.

On the other hand, applicant argues that its mark includes a most prominent design dating back centuries, symbolizing both the three crosses of Calvary (where Jesus Christ was crucified) as well as the Holy Trinity (Father, Son and Holy Spirit). By contrast, the registered mark has a playful combination of a golf putter, cup and golf ball, and the word "Classic" is included within more than a hundred

third-party registered composite marks for golf tournaments. Similarly, applicant points out that in a Google search of the Internet, the three words "Golf," "Classic" and "Tournament" appeared within the same records 5.4 million times, of which applicant included the first hundred summary hits. Hence, applicant contends, the word "Classic," in the context of the registered mark, directly connotes a golf tournament.

### **Likelihood of Confusion**

We turn then to a consideration of the issue of likelihood of confusion. Our determination of likelihood of confusion is based upon our analysis of all of the probative facts in evidence that are relevant to the factors bearing on this issue. See *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). See also, *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, although not exclusive, considerations are the similarities between the marks and the relationship between the goods and/or services. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976).

**Relationship of services, trade channels & consumers**

The Trademark Examining Attorney is correct in concluding that the charitable fund raising services of registrant and applicant are legally identical, that they would be promoted and sold through the same channels of trade to the same classes of ordinary consumers, and that all of these related *du Pont* factors weigh heavily against Applicant. However, this is a case where the similarities or dissimilarities of the marks may be a determinative factor. See *Kellogg Co. v. Pack'em Enterprises Inc.*, 951 F.2d 330, 21 USPQ2d 1142 (Fed. Cir. 1991).

**FROOT LOOPS** is not confusingly similar to

**Frootee Ice**



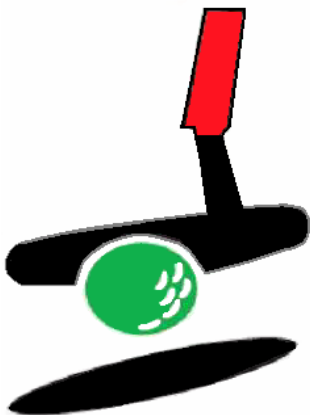
**Similarity of the marks**

We turn to the *du Pont* factor focusing on the similarities or dissimilarities in the appearance, sound, connotation and commercial impression of the respective marks. *Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005).

As to sound, the Trademark Examining Attorney is correct that the literal element, "Trinity," is the strongest source-identifying term in both marks. However,

we find, *inter alia*, that the design features of these marks cannot be dismissed quite as easily as the Trademark Examining Attorney has done.

As to appearance, the most prominent feature of applicant's mark is its historical religious icon. The addition of the word "Trinity" serves to reinforce the strong religious symbology - whether one associates it with the Holy Trinity, the crosses of Calvary, or simply Old World cathedrals.



While the cited mark contains an equally-arresting design, it consists of secular and contemporary imagery. Consistent with fund raising services for children, registrant leads with a playful - almost cartoon-like - image of a golfing putter, cup and green golf ball.

In addition to these striking differences in

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TRINITY



appearance, we find that these marks create different connotations and commercial impressions.

While both marks contain the word "Trinity," and applicant's broad recitation of services clearly must be deemed to encompass registrant's more narrowly-defined fund raising services, the literal elements convey quite different meanings within the context of the respective marks. Accordingly, we find that the word "Trinity" in applicant's mark contains an overwhelmingly-religious feel.

Although the record contains no indication of the likely connotation of the cited mark, we must conclude that it was arbitrary when adopted by registrant in January 2004. The cited mark was registered by Trinity Children and Family Services, now, by change of name, Trinity Youth Services, in conjunction with a charitable fundraising program for "foster care services, residential treatment, and education programs for children." Such services would tend to be associated by supporters with a particular organization providing these services (i.e., most donors to charitable causes donate to particular charitable causes or particular charities - not just to causes in the abstract). Hence, donors or supporters of registrant's services would tend to associate the mark with Trinity Youth Services, and thus the acquired connotation of the registered Trinity mark would be

of a youth services provider. Just as importantly, we agree with applicant that the presence of the word "Classic" in the registered mark, coupled with the putter and golf ball, inexorably suggests a golf tournament. Therefore, the connotation of the registered mark is of a golf tournament benefiting or run by a youth services provider.

Each likelihood of confusion determination must be reached based upon the relevant facts from the record, including "the nature and impact of the marks as well as the marketing environment in which a purchaser normally encounters them." *In re Sydel Lingerie Co., Ltd.*, 197 USPQ 629, 630 (TTAB 1977) [BOTTOMS UP for ladies' and children's underwear is not likely to cause confusion with the identical mark for men's suits, coats and trousers]. See also *In re Sears, Roebuck and Co.*, 2 USPQ2d 1312, 1314 (TTAB 1987) [CROSS-OVER was "suggestive of the construction of the brassieres," and hence had a different connotation than CROSSOVER for ladies' sportswear]; and *In re British Bulldog, Ltd.*, 224 USPQ 854, 856 (TTAB 1984), where the Board said: "Moreover, we agree with applicant's argument ... that the mark PLAYERS has somewhat different connotations when applied to these different goods, namely: PLAYERS for shoes implies a fit, style, color, and durability adapted to



outdoor activities. PLAYERS for men's underwear implies something else, primarily indoors in nature."

This seems to be a principle equally applicable to broader applications rather than merely to items of underwear. For this reason, we find that the two "Trinity marks" involved herein convey overall very different commercial impressions as applied to the respective services.

In conclusion, while the involved services are legally identical and must be deemed to be promoted through the same channels of trade to the same classes of ordinary consumers, given the significant differences in the appearance, connotations and commercial impressions of the respective marks as applied to the recited services, we find no likelihood of confusion herein.

*Decision:* The refusal to register under Section 2(d) of the Lanham Act is hereby reversed.