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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re B.S.A.

Serial No. 79063447

Bruce S. Londa of Norris, McLaughin & Marcus, PA for B.S.A.

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(K. Margaret Le, Managing Attorney).

Before Zervas, Kuhlke and Taylor, Administrative Trademark
Judges.

Opinion by Kuhlke, Administrative Trademark Judge:

B.S.A. seeks registration on the Principal Register of
the stylized mark **PRESIDENT** based on a request for
extension of protection under Section 66(a) of the
Trademark Act, 15 U.S.C. 1141(f), for services identified
as "retail store services featuring dairy products." The
application includes a claim of ownership of Registration
Nos. 948631 and 1710205.

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Registration has been refused under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark, when used with its identified services, so resembles the registered mark PRESIDENT in typed form for "retail grocery store services" as to be likely to cause confusion, mistake or deception.

The appeal is fully briefed. We affirm the refusal to register.

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 1357, 177 USPQ 563 (CCPA 1973). See also, *In re Majestic Distilling Co., Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the services. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976). See also, *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997).

With regard to the marks, there is no dispute that they are identical. In view of registrant's typed form we must consider all presentations including the applicant's

specific representation in block style letters. *Squirtco v. Tomy Corp.*, 697 F.2d 1038, 216 USPQ 937, 939 (Fed. Cir 1983); *In re RSI Systems, LLC* 88 USPQ2d 1445 (TTAB 2008).

Turning to an analysis of the services, we begin by noting that where the marks are identical the relationship between the services of the respective parties need not be as close to support a finding of likelihood of confusion as might apply where differences exist between the marks. *In re Opus One Inc.*, 60 USPQ2d 1812, 1815 (TTAB 2001).

The examining attorney submitted dictionary definitions for the word "grocery" and "grocer"¹ to show that applicant's "retail dairy store services are merely a type of retail grocery store service provided by registrant's grocery store services." Final Office Action, dated August 25, 2009, p. 3. In addition, the examining attorney submitted several third-party use-based registrations for retail grocery store services and dairy products in support of her position that the respective services are related. See *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783 (TTAB 1993). Finally, she submitted screenshots from retail grocery store websites that show

¹ "Grocer: a dealer in staple foodstuffs, meats, produce and dairy products and usually household supplies." Merriam-Webster Online Dictionary (2009), retrieved from www.merriam-webster.com.

that dairy products comprise major departments within grocery stores. See Final Office Action. We find all of her submissions to be probative evidence as to the closeness of the services and that registrant's services encompass applicant's services. Applicant did not dispute the relatedness of these types of services.

Moreover, inasmuch as there are no limitations as to channels of trade, we must presume that the applicant's and registrant's channels of trade and classes of purchasers overlap. *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 0101 (Fed. Cir. 2002); *Genesco Inc. v. Martz*, 66 USPQ2d 1260, 1268 (TTAB 2003).

Applicant's arguments regarding its prior registrations do not persuade us of a different result. Applicant's prior Registration No. 1710205 (issued on April 15, 1998, renewed) is for the mark PRESIDENT in typed form for "milk and dairy products; namely, butter, cheese, cream, yogurt and powdered milk." Applicant's prior Registration No. 948631 (issued on December 12, 1972, renewed) for the mark shown below is for "camembert cheese."



Applicant argues that its "prior registrations for PRESIDENT for dairy products are prima facie evidence of the distinctiveness of the identical mark for the retail store services covered by the pending application, because these retail store services feature identical goods (namely dairy products) as those for which the prior registrations issued." Br. p. 4. Extrapolating from that argument, applicant contends that "[d]ue to the secondary meaning Applicant has already established from decades of use and registration of its PRESIDENT mark for dairy products, consumers are not likely to be confused between the retail store services featuring these very same goods (dairy products, namely cheeses and related dairy goods) offered by Applicant under its mark and the retail grocery store services offered by Registrant under the Cited Registration." Id.

The cases relied on by applicant involve circumstances where a prior registration for certain sufficiently related goods or services was sufficient to assert a claim of acquired distinctiveness under Section 2(f) to obviate a

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refusal based on descriptiveness under Section 2(e)(1). In re Best Products Co., Inc., 231 USPQ 988, 989 n. 6 (TTAB 1986) (claim of acquired distinctiveness for BEST JEWELRY & Design for retail jewelry store services accepted based on prior registration for BEST & Design for mail order and catalog showroom services, descriptiveness refusal withdrawn; likelihood of confusion refusal reversed due to differences in marks and differences in applicant's services and cited registrant's goods);² In re Owens-Illinois Glass Company, 143 USPQ 431, 432 (TTAB 1964) (descriptiveness refusal reversed because "any distinctiveness that applicant's mark 'LIBBEY' might possess as applied to cut-glass articles [in prior registration] would more than likely carry over to its plastic tableware").

The issue here is not whether PRESIDENT is descriptive of the retail services. Rather applicant's point is that due to the longstanding use of PRESIDENT in association with its dairy products, consumers, upon seeing the mark used for a store selling dairy products, would not be

² The Board specifically stated that it did not "find persuasive" the argument that because BEST had acquired independent distinctiveness that it has a distinguishing commercial impression. Id. at 990 n. 7.

confused as to source such that they would attribute that store to registrant.

First, there is no evidence pertaining to the extent of applicant's use of the mark in connection with dairy products. While the registrations are prima facie evidence of the ownership and validity of these marks, they are not evidence of use, and in particular, the extent of such use.

Second, even assuming widespread use of the mark with the dairy products, this does not serve to obviate a likelihood of confusion between applicant's store services and registrant's store services. In fact, if applicant's dairy products were so well-known it could lead to reverse confusion whereby consumers would attribute registrant's store to applicant. Moreover, there are no limitations in the application or registration such that applicant's stores are restricted to offering only applicant's dairy products and similarly there is no limitation to exclude applicant's products from registrant's stores. Presumably consumers have encountered applicant's dairy products under the mark PRESIDENT in a wide variety of stores. Finally, it is likely that consumers familiar with registrant's PRESIDENT stores would believe that stores under the mark PRESIDENT featuring dairy products are an extension of registrant's grocery stores.

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In conclusion, we find on this record that because the marks are identical, the services are related and the trade channels and classes of purchasers overlap, confusion is likely between applicant's mark PRESIDENT and the mark PRESIDENT in the cited registration.

Decision: The refusal to register under Section 2(d) of the Trademark Act is affirmed.