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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	85264259
Applicant	Palm Beach Motoring Accessories, Inc.
Applied for Mark	AUTOPIA CAR CARE
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Submission	Request for Recnsdratr from Final Bd Dcsn
Attachments	Request_Reconsideration.pdf(67138 bytes) Reg_2969995_specimen.pdf(451080 bytes) wikipedia.pdf(39466 bytes)
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Date	08/02/2013

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
Before the Trademark Trial and Appeal Board

Applicant: Palm Beach Motoring Accessories, Inc.
Application No.: 85-264,259
Filed: March 11, 2011
Mark: AUTOPIA CAR CARE
Int. Classes: 35 and 41
Law Office: 110
Examining Attorney: Giancarlo Castro

TO: Trademark Trial and Appeal Board
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

REQUEST FOR RECONSIDERATION UNDER 37 C.F.R. § 2.144

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August 2, 2013

INTRODUCTION

Pursuant to 37 C.F.R. § 2.144, applicant Palm Beach Motoring Accessories, Inc. (PBMA) respectfully requests reconsideration and/or modification of the Board's opinion dated July 2, 2013, in which the Board affirmed the examining attorney's refusal to register AUTOPIA CAR CARE on the Principal Register in Int. Classes 35 and 41.¹

ARGUMENT

I. Applicant's Reliance on Registration No. 2969995 as Evidence of Third Party Use of AUTOPIA for Automobile-Related Services Is Not Misplaced; The Scope of Protection of AUTOPIA is Narrow.

In its opinion, the Board stated that PBMA's reliance on "Registration No. 2969995 for the mark AUTOPIA for 'Amusement park services' is misplaced because that mark is *not* used for automobile-related products or services."² (emphasis added) Applicant respectfully disagrees, and asks the Board to take judicial notice of the file of the '995 registration. The specimen of use filed by the registrant (Disney Enterprises, Inc.) is a map of Disneyland, with an arrow pointing to an attraction named "Autopia" presented by Chevron in the "Tomorrowland" section of the park.³ The Board may also

¹ The refusal is based on Section 2(d) of the Act, in view of Registration No. 2046127 for AUTOPIA for automobile repair and service, in Class 37.

² Opinion, at page 5, n.4.

³ For the convenience of the Board, a copy of the Disney AUTOPIA Registration No. 2969995 and specimen are appended as Attachment 1.

take notice of the attached page from Wikipedia⁴ where Autopia is defined at the top of the page as:

“a Disneyland attraction, in which patrons steer *specially designed cars* through an enclosed track. Versions of Autopia exist at Anaheim, California, Disneyland Paris in Marnela-Valle, France, and at Hong Kong Disneyland on Lantau Island, Hong Kong. Other versions of the attraction can be found at the Magic Kingdom as the Tomorrowland Speedway and at Tokyo Disneyland as the Grand Circuit Raceway.

The name Autopia is a portmanteau of the words "*automobile utopia*," which was popularized in academic circles by British architecture critic Reyner Banham to describe Los Angeles in his 1971 book "Los Angeles: The Architecture of Four Ecologies." (emphasis added)

Accordingly, PBMA’s reliance on the ‘995 registration as evidence of third party use of AUTOPIA for automobile-related products or services, is *not* misplaced. Given the use of AUTOPIA by Disney Enterprises for an automobile-related attraction at its popular amusement parks, significant consumer exposure to the mark can be presumed. The ‘995 registration, and the additional third party usage of AUTOPIA made of record by PBMA and summarized in the Board’s opinion,⁵ show that AUTOPIA

⁴ Attachment 2. The Board can take judicial notice of dictionary definitions. *University of Notre Dame du Lac v. J.C. Gourmet Food Imports Co., Inc.*, 213 USPQ 594, 596 (TTAB 1982).

⁵ Opinion, at page 5.

is more than just “somewhat” suggestive of automobile-related products and services.⁶

The scope of protection afforded by AUTOPIA should therefore be relatively narrow and not encompass services that differ significantly from those of a given user. Moreover, the combination of AUTOPIA with the words CAR CARE, albeit descriptive, further lessens the likelihood of confusion between the cited registrant’s AUTOPIA mark and applicant’s mark AUTOPIA CAR CARE.⁷

II. *The Differences Between the Applicant’s and the Cited Registrant’s Services, and the Channels of Trade Through Which the Services Are Performed, Foreclose Any Reasonable Likelihood of Confusion under Section 2(d).*

As discussed by the Board, the examining attorney introduced a number of marks registered to different owners, each for automobile cleaning services on one hand and auto repair or maintenance services on the other, to show that PBMA’s services and those of the cited registrant are related.⁸ Among those registrations, No. 3081901 for 06 GOLEO VI and No. 3086600 for LOVE YOUR CAR are now canceled under Section 8 of the Act. And while the remaining live registrations do include automobile cleaning or detailing, and automobile maintenance and repair in their lists of

⁶ *Id.*, at 5-6.

⁷ *In re Sien Equipment Co.*, 189 USPQ 586, 588-89 (TTAB 1975)(“Sien Brute” for mine vehicles, *held*, not confusingly similar to “Brute” for material handling equipment); and *Standard Brands Inc. v. Peters*, 191 USPQ 168, 172 (TTAB 1975)(“Corn-Royal” for butter and margarine, *held*, not confusingly similar to “Royal” for various food products).

⁸ See Opinion, at pages 7-8.

services (all in Class 37), *none* of the registrations lists in addition either on-line retail store services featuring vehicle detailing products (in Class 35), or providing on-line instructional guides in the field of detailing (in Class 41), as those services are described in PBMA's present application. Accordingly, PBMA respectfully submits that the registrations introduced by the examining attorney do not suggest that the respective registrants' services, and those of PBMA, "are of a type which may emanate from a single source."⁹

Likewise, the printouts from the presently cited AUTOPIA registrant's website that were submitted with PBMA's Office action response of August 24, 2011, and on which the registrant offers hand car wash services in addition to car repair services,¹⁰ make no such suggestion. That is, like the owners of the registrations introduced by the examining attorney, the presently cited AUTOPIA registrant does *not* offer on-line retail store services featuring vehicle detailing products, or on-line instructional detailing guides. All of the cited registrant's services are of a kind that can only be performed physically at the registrant's repair facility, while all of PBMA's services are performed solely on-line. Accordingly, the services provided by the

⁹ See Opinion, at pages 7-8. Applicant represents that the detailing products it sells at retail on line are labeled and sold as third party brands, and that applicant does *not* use AUTOPIA CAR CARE as a mark or a brand name for the detailing products sold. See Opinion, at page 8, n.6.

¹⁰ Opinion, at pages 8-9.

registrant and by PBMA do not travel in the same channels of trade.¹¹ Because the differences between PBMA's services and those of the cited registrant are significant, the scope of protection of the registrant's AUTOPIA mark is relatively narrow, and the respective channels of trade are quite dissimilar, there can be no likelihood of confusion among the consuming public in the meaning of Section 2(d) of the Act.

CONCLUSION

The decision by the examining attorney to refuse registration of AUTOPIA CAR CARE in Classes 35 and 41 should be reversed, and the present application allowed to pass to publication.

Respectfully submitted,

/Leo Zucker/

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August 2, 2013

¹¹ See Opinion, at pages 9-10.

Int. Cl.: 41

Prior U.S. Cls.: 100, 101 and 107

United States Patent and Trademark Office

Reg. No. 2,969,995

Registered July 19, 2005

**SERVICE MARK
PRINCIPAL REGISTER**

AUTOPIA

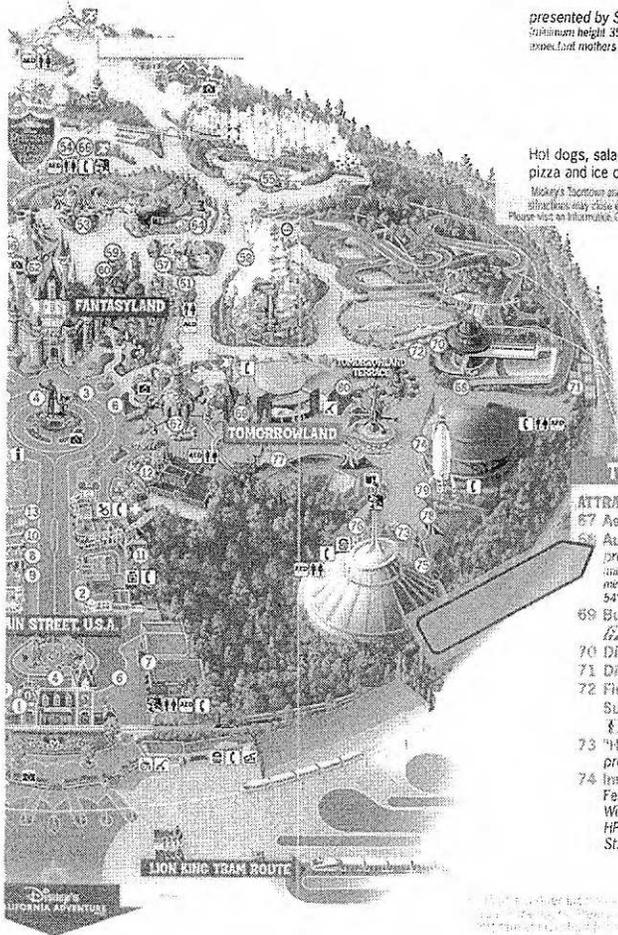
DISNEY ENTERPRISES, INC. (DELAWARE COR-
PORATION)
500 SOUTH BUENA VISTA STREET
BURBANK, CA 91521

FIRST USE 7-17-1955; IN COMMERCE 7-17-1955.

SER. NO. 78-305,061, FILED 9-24-2003.

FOR: AMUSEMENT PARK SERVICES, IN CLASS
41 (U.S. CLS. 100, 101 AND 107).

DAVID ELTON, EXAMINING ATTORNEY



presented by Sparkle
 (minimum height 35/89 cm;
 expectant mothers should not ride)

Hot dogs, salads, sandwiches,
 pizza and ice cream treats
 Mickey's Toontown and select Fantasyland
 attractions may close early due to fireworks.
 Please visit an Information Center for operating hours.

TOMORROWLAND

ATTRACTIONS

- 67 Astro Orbiter
- 68 Autopia
 presented by Chevron
 (minimum age 12 months and
 minimum height 32/81 cm and
 54/137 cm to drive alone)
- 69 Buzz Lightyear Astro Blasters
- 70 Disneyland Monorail
- 71 Disneyland Railroad
- 72 Finding Nemo
 Submarine Voyage
 alternate experience
- 73 "Honey, I Shrunk the Audience"
 presented by Kodak
 Featuring the Dream Home
 With experiences presented by Honda,
 HP, Lifestore, Microsoft, Siemens,
 St. Joseph Hospital, and Taylor Morrison.

- 52 Casey Jr. Circus Train
 - 53 Dumbo the Flying Elephant
 - 54 Disney Princess Fantasy Faire
 presented by Nestlé Ice Cream
 (See TIMES GUIDE for show times)
 - 55 "It's a small world"
 - 56 King Arthur Carousel
 - 57 Mad Tea Party
 - 58 Matterhorn Bobsleds
 (minimum height 35/89 cm)
 - 59 Mr. Toad's Wild Ride
 - 60 Peter Pan's Flight
 - 61 Pinocchio's Daring Journey
 - 62 NEW! Sleeping Beauty
 Castle Walkthrough
 alternate experience
 - 63 Snow White's Scary Adventures
 - 64 Storybook Land Canal Boats
 (Closed during parades)
- DISNEY DINING**
- 65 Village Haus Restaurant
 hosted by Minute Maid
 Hamburgers, pizza and salads
 - 66 Enchanted Cottage,
 Sweets and Treats
 hosted by Nestlé Ice Cream,
 Bavarian-style sausages,
 desserts and drinks

- 75 Space Mountain
 (minimum height 40/102 cm)
 - 76 Starcade
 - 77 Star Tours
 (minimum height 40/102 cm)
- DISNEY DINING**
- 78 Raddi Reukott's Pizzeria Port
 Pizza, pasta and salads
 - 79 The Spirit of Refreshment
 hosted by Coca-Cola
 - 80 Tomorrowland Terrace
 Breakfast, sandwiches,
 burgers, salads, desserts
 and drinks

- Automated External
 Defibrillators
- Information Center
 Guest Bookings
- First Aid
- ATM Locations
- Pay Phones
- Pay Phones with TTY
- Baby Care Center
- Stroller Rentals
- Locker Rentals
- Picnic Area
- Wheelchair Rentals
- Package Check Service
- Kennel
- Kodak "Photo Spot"
- Disney's FASTPASS service
 (Subject to availability)
- Single Rider Service
 (Subject to availability)
- Height Requirement
- Guests May Remain in
 Wheelchair/ECV
- Guests Must be Ambulatory
- Guests Must Transfer
 from Wheelchair/ECV
- Guests Must Transfer
 from ECV to Wheelchair
- Physical Considerations
 (See reverse side)
- This attraction may be
 frightening for children
- Reflective Captioning
- Hand-Held Captioning
- Assistive Listening -
 Headsets Available
 at City Hall
- Closed Captioning -
 Headsets Available
 at City Hall
- Smoking Area
- Priority Seating Restaurant
- Disney's PhotoPass Center

Disney ©Disney/Pearl
 Varco's Trakehouse™ "MAGNET" Owned by Edgar Rice Burroughs
 Inc. and used by permission. ©1998 Edgar Rice
 Burroughs, Inc. and Disney Enterprises, Inc. All Rights Reserved.
 Roger Rabbit's Car Toon Spin
 TOMORROWLAND Character ©Disney/Walt Disney Entertainment, Inc.
 Finding Nemo Submarine Voyage is licensed by Disney/Pearl

Be the First™ Advertisers and Star Tours
 ©Disney/Lucasfilm Ltd.
 Buzz Lightyear Astro Blasters is inspired by Disney/Pearl's
 Toy Story 2.
 Attractions and entertainment may be seasonal and are subject
 to change without notice.

Autopia

From Wikipedia, the free encyclopedia

Autopia is a Disneyland attraction, in which patrons steer specially designed cars through an enclosed track. Versions of Autopia exist at Anaheim, California, Disneyland Paris in Marne-la-Vallée, France, and at Hong Kong Disneyland on Lantau Island, Hong Kong. Other versions of the attraction can be found at the Magic Kingdom as the **Tomorrowland Speedway** and at Tokyo Disneyland as the **Grand Circuit Raceway**.

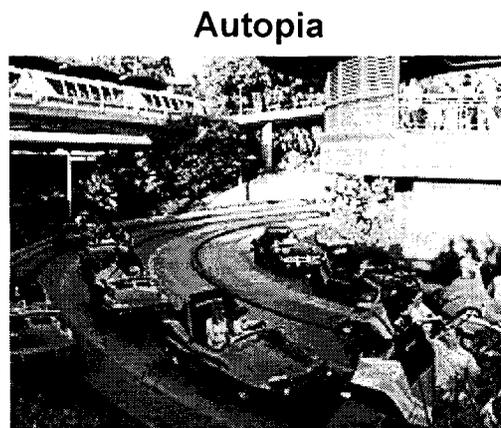
The name Autopia is a portmanteau of the words "**automobile utopia**," which was popularized in academic circles by British architecture critic Reyner Banham to describe Los Angeles in his 1971 book "Los Angeles: The Architecture of Four Ecologies."

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Disneyland Autopia history

The Disneyland Autopia, in one form or another, is one of the few current attractions that opened with the park on July 17, 1955. When it opened, it represented the future of what would become America's multilane limited-access highways, which were still being developed. President



Disneyland's Autopia

Disneyland

Area	Fantasyland, relocated at Tomorrowland
Coordinates	33.8125°N 117.9164°W﻿ / ﻿33.8125°N 117.9164°W﻿ / 33.8125; -117.9164﻿ / 33.8125; -117.9164
Status	Operating
Opening date	July 17, 1955

Magic Kingdom

Area	Tomorrowland
Coordinates	28.4194°N 81.5792°W﻿ / ﻿28.4194°N 81.5792°W﻿ / 28.4194; -81.5792﻿ / 28.4194; -81.5792
Status	Operating
Opening date	October 1, 1971

Tokyo Disneyland

Area	Tomorrowland
Coordinates	35.6314°N 139.8788°E﻿ / ﻿35.6314°N 139.8788°E﻿ / 35.6314; 139.8788﻿ / 35.6314; 139.8788
Status	Operating
Opening date	April 15, 1983

Disneyland Park (Paris)

Area	Discoveryland
Coordinates	48.8729°N 2.7794°E﻿ / ﻿48.8729°N 2.7794°E﻿ / 48.8729; 2.7794﻿ / 48.8729; 2.7794
Status	Operating
Opening date	April 12, 1992

Hong Kong Disneyland

Area	Tomorrowland
Coordinates	22.3147°N 114.0419°E﻿ / ﻿22.3147°N 114.0419°E﻿ / 22.3147; 114.0419﻿ / 22.3147; 114.0419