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PRECEDENT OF THE TTAB

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Palm Beach Motoring Accessories, Inc.

Serial No. 85264259

Request for Reconsideration

Leo Zucker of Law Office of Leo Zucker for Palm Beach Motoring Accessories, Inc.

Giancarlo Castro, Trademark Examining Attorney, Law Office 110 (Chris A.F. Pedersen, Managing Attorney).

Before Bergsman, Wellington and Adlin, Administrative Trademark Judges.

Opinion by Adlin, Administrative Trademark Judge:

Palm Beach Motoring Accessories, Inc. (“applicant”) seeks registration of the mark AUTOPIA CAR CARE, in standard characters and with CAR CARE disclaimed, for “On-line retail store services featuring products for cleaning, polishing and detailing motor vehicles” and “Providing on-line publications in the nature of instructional guides in the fields of cleaning, polishing and detailing motor

vehicles.”¹ The examining attorney refused registration of the mark under Section 2(d) of the Act, on the ground that applicant’s mark, when used in connection with applicant’s services, so resembles the previously-registered mark AUTOPIA in typed form for “automobile repair and service” as to be likely to cause confusion.² On July 2, 2013, the Board issued a final decision (the “Final Decision”) affirming the refusal to register, and on August 2, 2013, applicant filed a motion for reconsideration of the Final Decision.

Applicant argues in its motion that it was improper for the Board to give no weight to third party Registration No. 2969995 for the mark AUTOPIA for “Amusement park services.” Specifically, applicant argues that the mark in that registration is in fact used for an amusement park ride at Disneyland and other Disney amusement parks in which riders steer cars around tracks. Applicant submits evidence concerning this ride for the first time and separately requests that the Board take judicial notice of the file of that registration, including a specimen depicting the Disneyland ride. Based on this evidence, applicant argues that “[t]he scope of protection afforded by AUTOPIA should therefore be relatively narrow and not encompass services that differ significantly from those of a given user.” Applicant further argues that the words CAR CARE distinguish its mark from the cited mark, that two of the third-party registrations upon which the examining attorney relied to establish the relatedness of applicant’s and registrant’s services

¹ Application Serial No. 85264259, filed March 11, 2011, based on first use dates of April 21, 1999.

² Registration No. 2046127, issued March 18, 1997; renewed.

have been canceled and that none of the third-party registrations introduced by the examiner includes online retail store services featuring vehicle detailing products or providing online instructional guides in the field of detailing. Finally, applicant points out that while the owner of the cited registration offers hand car wash services, it does not offer online retail store services featuring vehicle detailing products or online instructional detailing guides.

“[T]he premise underlying a request for ... reconsideration ... is that, based on the evidence of record and the prevailing authorities, the Board erred in reaching the decision it issued. The request may not be used to introduce additional evidence, nor should it be devoted simply to a reargument of the points presented in the requesting party’s brief on the case.” TBMP § 543 (3d ed. rev. 2013); *see also*, TBMP § 1219.01. Here, in addition to attempting to introduce additional evidence and rearguing points presented in its Appeal Brief, applicant has not established that the Board erred in the Final Decision.

There was no error in finding Registration No. 2969995 irrelevant, because we must limit our consideration to the identification of services included in that registration, in this case “Amusement park services.” *See generally, In re Bercut-Vandervoort & Co.*, 229 USPQ 763, 764-65 (TTAB 1986). *See also, Tuxedo Monopoly, Inc. v. General Mills Fun Group, Inc.*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981); *In re Thor Tech Inc.*, 90 USPQ2d 1634, 1637-38 (TTAB 2009). There is no evidence in the record that, as applicant now contends, AUTOPIA is in fact used for an amusement park ride featuring automobiles, and it is too late to

introduce such evidence or take judicial notice of anything now. Trademark Rule 2.142(g).³ In any event, in the Final Decision we assumed “that AUTOPIA is somewhat suggestive of, and that it is not entitled to an exceedingly ‘wide scope of protection’ for, automobile-related products and services,” so even were we to consider Registration No. 2969995 in the manner proposed by applicant, we would still affirm the examining attorney’s refusal of registration.

Applicant’s argument that CAR CARE distinguishes its mark from the cited mark is unavailing, because as stated in the Final Decision, “applicant’s services relate to caring for (i.e. ‘cleaning, polishing and detailing’) cars, and accordingly applicant has disclaimed CAR CARE, which therefore has little significance in our likelihood of confusion determination.” Final Decision at 4 (citations omitted).

Despite the apparent cancellation of two third party registrations which helped to establish a relationship between automobile cleaning-related services on the one hand and automobile repair or maintenance services on the other, at least 12 remain, which is more than enough to establish the relationship between these services. It simply does not matter that none of the third-party registrations include the exact services for which applicant seeks registration. The point is that automobile cleaning-related services, such as applicant’s, are related to automobile repair services, such as registrant’s. Furthermore, as pointed out in the Final Decision at pages 6-7, “the service component of registrant’s ‘automobile repair and

³ Of course, even accepting applicant’s representations about the Disney ride as true, the AUTOPIA mark is still used for a *ride* rather than anything related to *consumer automobiles*.

service,' which is unlimited in scope, could encompass automobile 'cleaning, polishing and detailing' services, which are closely and directly related to, and indeed the subject of, applicant's online services." In any event, applicant made the same argument in its briefs, and is simply rearguing the point now, which is improper. Applicant's Appeal Brief at 4; Applicant's Reply Brief at 2. And even if we accept applicant's assertion that the owner of the cited registration does not offer the exact same services as applicant, that is simply irrelevant, the point being that its services are related to applicant's.

Decision: For all of these reasons, applicant's motion for reconsideration is denied.