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UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re KSM Castings Group GMBH

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Serial No. 85306954

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Stewart J. Bellus of Collard & Roe, P.C. for KSM Castings Group GMBH.

Gina Hayes, Trademark Examining Attorney, Law Office 103 (Michael Hamilton,
Managing Attorney).

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Before Wellington, Ritchie, and Hightower,
Administrative Trademark Judges.

Opinion by Wellington, Administrative Trademark Judge:

KSM Castings Group GMBH (“applicant”) filed application to register the mark CVC, in standard character form, for a long list of goods and services in International Classes 7, 12, and 40.¹ The identification of goods for Class 12, as amended and in pertinent part, includes:

Transmission parts for land vehicles, namely, disk carriers; transmission housings for land vehicles; body parts for land vehicles, namely, connecting

¹ Application Serial No. 85306954 was filed under Section 44 of the Act and based on applicant’s ownership of a German registration. The application was filed on April 28, 2011, but has been accorded a priority filing date of November 1, 2010 based on the German registration.

elements, nodes of die-cast aluminum, and cast comers; ... transmissions for land vehicles; clutches for land vehicles; knuckles for land vehicles; land vehicle brakes; chassis for motor vehicle; torque converters and parts thereof for land vehicles; shifting clutches and parts thereof for land vehicles; driving mechanism and parts thereof for land vehicles; clutches and parts thereof for land vehicles; connecting rods for land vehicles except engine parts; wheel axles; drive shafts for land vehicles; wheel suspension systems comprised of axles, axle mountings and individual parts thereof; shaft mountings for vehicles and parts therefor; rubber metal parts, namely, shock absorbers as vehicle parts for insulation of mechanical vibration; joints and individual parts thereof, namely, ball joints for vehicles; universal joints and individual parts thereof for vehicles; ... steering columns and individual parts thereof for vehicles, cardan shafts for vehicles; steering gears and individual parts thereof for vehicles; ... parts for motor vehicle, namely, connecting struts, suspension links, trailing arms, transverse links, semi-tailing links, wishbones, four-point links, multiple links, supporting links, guide links, spring links, trapezoidal links, track rods and stabilizers; body and structural parts for vehicles, namely, pillars, door impact supports, floor groups, tunnels, sills, roof frames, instrument panel supports and deformable steering protection tubes, not as parts of engines; cross and longitudinal members as parts of the vehicle body, namely, for the reinforcement thereof and protection from impact and rollover; body parts, namely, door inner panels, mudguards, bonnets, knuckles, front axles, rear axles, twist beam axles for motor vehicles; bumper systems for motor vehicles comprising bumper cross members, crashboxes and flange plates and parts thereof; bumpers for motor vehicles; chassis and wheel suspensions for vehicles and parts thereof, namely rear axle carriers, front axle carriers, auxiliary frames and cross members, in particular integral die-cast carriers; axle carriers and engine bearers, axle mounts, knuckles and pivot bearings for vehicles; slider housings as a transmission part for vehicles; ... all such above-mentioned goods not for use in rolling mills or as part of rolling mills in International Class 12. (Underline added for emphasis and ease of reference).

The Trademark Examining Attorney refused to register applicant's mark under Section 2(d) of the Trademark Act of 1946, 15 U.S.C. § 1052(d), on the ground that applicant's mark so resembles the previously registered mark CVCC, in standard character form, for "structural parts and engines for automobiles," in

Class 12, as to be likely to cause confusion.² The refusal is specifically limited to the goods identified in Class 12 of the application.³

Likelihood of Confusion

Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the issue of likelihood of confusion. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973). *See also, In re Majestic Distilling Company, Inc.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods or services. *See Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) (“The fundamental inquiry mandated by §2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.”).

A. The similarity or dissimilarity and nature of the goods described in the application and registration, established, likely-to-continue channels of trade, and classes of consumers.

The goods are in part identical because both the application and cited registration list “structural parts” for automobiles. Applicant’s long and very detailed list of structural parts (see underlined portions above) is encompassed by the registration’s more general “structural parts...for automobiles” wording. In addition, the examining attorney has submitted evidence showing that other goods

² Registration No. 2148579, issued April 7, 1998, renewed.

³ See final Office action dated January 25, 2013 (“Refusal...limited to Applicant’s Class 12 Goods”).

identified in the application, *e.g.*, transmissions, are closely related to registrant's "engines." The application's Class 12 list of goods is lengthy; however, it is not necessary for the Trademark examining attorney to not similarity as to each and every product listed. Rather, it is sufficient for a refusal based on likelihood of confusion that relatedness is established for any item encompassed by the identification of goods in the application. *Tuxedo Monopoly, Inc. v. General Mills Fun Group*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981); *Apple Computer v. TVNET.Net, Inc.*, 90 USPQ2d 1393, 1398 (TTAB 2007).

Because the goods described in the application and registration are in part identical, we must presume that the channels of trade and classes of purchasers for these goods are also the same. *See American Lebanese Syrian Associated Charities Inc. v. Child Health Research Institute*, 101 USPQ2d 1022, 1028 (TTAB 2011); *In re Smith and Mehaffey*, 31 USPQ2d 1531, 1532 (TTAB 1994) ("Because the goods are legally identical, they must be presumed to travel in the same channels of trade, and be sold to the same class of purchasers."). *See also In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (even though there was no evidence regarding channels of trade and classes of consumers, the Board was entitled to rely on this legal presumption in determining likelihood of confusion).

In sum, we find that certain goods identified in the application are identical to those identified in the registration and other goods are closely related. With respect to the identical goods, namely, structural parts for automobiles, the trade

channels and classes of consumers are also the same. Accordingly, these *du Pont* factors weigh in favor of finding a likelihood of confusion.

B. The similarity or dissimilarity of the marks in their entirety as to appearance, sound, connotation and commercial impression.

We now turn to the *du Pont* likelihood of confusion factor focusing on the similarity or dissimilarity of the marks in their entirety as to appearance, sound, connotation and commercial impression. *In re E. I. du Pont De Nemours & Co.*, 177 USPQ at 567. In a particular case, any one of these means of comparison may be critical in finding the marks to be similar. *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988); *In re Lamson Oil Co.*, 6 USPQ2d 1041, 1042 (TTAB 1987). In comparing the marks, we are mindful that where, as here, the goods are in part identical, the degree of similarity necessary to find likelihood of confusion need not be as great as where there is a recognizable disparity between the goods. *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992); *Jansen Enterprises Inc. v. Rind*, 85 USPQ2d 1104, 1108 (TTAB 2007); *Schering-Plough HealthCare Products Inc. v. Ing-Jing Huang*, 84 USPQ2d 1323, 1325 (TTAB 2007). Furthermore, in comparing the marks, the test 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 so that confusion as to the source of the goods offered under the respective marks is likely to result. *San Fernando Electric Mfg. Co. v. JFD Electronics Components Corp.*, 565 F.2d 683, 196 USPQ 1, 3 (CCPA 1977); *Spoons Restaurants Inc. v. Morrison Inc.*, 23 USPQ2d 1735, 1741 (TTAB 1991), *aff'd*

unpublished, No. 92-1086 (Fed. Cir. June 5, 1992). The proper focus is on the recollection of the average customer, who retains a general rather than specific impression of the marks. *Winnebago Industries, Inc. v. Oliver & Winston, Inc.*, 207 USPQ 335, 344 (TTAB 1980); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975).

The marks are visually very similar inasmuch as applicant's mark, CVC, is nearly the same as the registered mark, CVCC. Both marks are similarly structured and appear to be initialisms, with the sole difference being the registered mark having an extra letter "C" at the end. Because neither mark is a recognized English word, there is no clear or correct way to pronounce applicant's or registrant's trademark. Applicant argues that consumers will verbalize the letters individually and that the last letter of registrant's mark suffices for distinguishing the two marks. See Brief at p. 3 ("the trademark CVCC would be pronounced [see-vee-see-see], while applicant's trade mark would be pronounced [see-vee-see].") We disagree that this serves to differentiate them much in pronunciation (or appearance); rather, should consumers reference the marks by verbalizing each letter, we find there is a strong aural similarity between the two marks.

Applicant argues that evidence it has submitted shows that "relevant consumers would recognize CVCC as an acronym for a specific Honda [registrant] product used for Honda Civic automobiles." Brief, p. 3 ("CVCC" is an acronym used by [registrant] for 'Compound Vortex Controlled Combustion".) However, the record does not establish this meaning is common knowledge and consumers of the

goods will make this association for purposes of distinguishing the two marks. Even if consumers believe that each mark is an acronym or initialism, the facts that the first three letters as well as the goods, in part, are identical may lead consumers to believe that first three letters in each mark have the same relevance. In other words, consumers may believe that applicant's mark is merely a shortened or abbreviated version of registrant's mark.

In view of the foregoing, we find that applicant's mark CVC is similar to the registered mark CVCC in terms of appearance, sound, meaning and commercial impression.

Because the marks are similar, the goods are in part identical and we presume that the goods move in the same channels of trade and are sold to the same classes of consumers, we find that applicant's mark CVC, if used on the goods identified in Class 12 of the application, is likely to cause confusion with the registered mark, CVCC, as used on the goods identified in the registration.

Decision: The refusal to register is affirmed as to Class 12 of the application.