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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

*In re C. Preme Limited, LLC*

Serial No. 85316370

William J. Seiter of Seiter & Co. for C. Preme Limited, LLC

Kristina Morris, Trademark Examining Attorney, Law Office 116 (Michael W. Baird, Managing Attorney).

Before Holtzman, Mermelstein and Adlin, Administrative Trademark Judges.

Opinion by Adlin, Administrative Trademark Judge:

C. Preme Limited, LLC (“applicant”) seeks registration of the mark shown below



for, *inter alia*, bicycles and structural and other parts for bicycles.<sup>1</sup> The application includes the following description of the mark: “The mark consists of a stylized grinning circular head in right profile showing large teeth represented by eight squares inside an open smiling mouth, with a five-pointed crown atop the head at a slight angle. Below the head appears the letter ‘C’ and the term ‘PREME’ in stylized capital letters separated by a dot.”

The examining attorney refused registration of the mark under Section 2(d) of the Act, on the ground that applicants’ mark, when used in connection with applicant’s goods, so resembles the previously-registered mark SUPREME, in typed format, for “bicycles and structural parts therefor”<sup>2</sup> as to be likely to cause confusion. The examining attorney also refused registration in the absence of a disclaimer of C•PREME, finding that element of the mark to be “a creative misspelling of the word SUPREME,” and that “the wording must appear in its correct spelling in the disclaimer, i.e. SUPREME.”

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<sup>1</sup> Application Serial No. 85316370, filed May 9, 2011 based on an alleged intent to use the mark in commerce. The identification of goods in International Class 12 is, in its entirety: “Bicycles; bicycle handlebar grips; bicycle grip tape; bicycle seats; structural parts of bicycles; parts for bicycles, namely, frames, handlebars, handlebar stems, bicycle handlebar grips, derailleurs, gears, saddles, saddle covers, saddle bags, seat posts, pedals, cranks, wheels, spokes, pumps, forks, cargo and luggage carriers; bicycle mud-guards, chains, chain-guards, wheel hubs, brakes, handle bar control levers, shift levers, toe straps and clips, luggage racks adapted for bicycles, bicycle bells, bicycle stop stands, rearview mirrors, tire patches, bicycle canteen racks, bicycle holders for vehicles, bags adapted for bicycles, bicycle handle-bar grip covers, trailers, baskets adapted for bicycles, bicycle protective wheels, wheel covers, bicycle shock absorbers, bicycle rims.” In addition to these goods, applicant seeks registration for a variety of goods in International Classes 9, 18 and 25.

<sup>2</sup> Registration No. 2461239, issued June 19, 2001 from an application filed December 23, 1999, renewed.

After the refusals were made final, applicant appealed, and its request for reconsideration was denied. Applicant and the examining attorney filed briefs. We reverse both refusals to register.

**Likelihood of Confusion**

Our determination under Section 2(d) is based on an analysis of all 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 and/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.”). We discuss each of the *du Pont* factors concerning which applicant or the examining attorney submitted argument or evidence. To the extent that any other *du Pont* factors for which no evidence or argument was presented may nonetheless be applicable, we treat them as neutral.

Applicant’s goods include “bicycles” and “structural parts of bicycles,” and registrant’s goods are “bicycles and structural parts therefor.” The goods are therefore identical. Furthermore, because the goods are identical, and neither applicant’s nor registrant’s identification of goods includes any limitation with

respect to consumers or channels of trade, we presume that the goods move in the same channels of trade and are sold to the same classes of consumers. 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.”); *In re Elbaum*, 211 USPQ 639, 640 (TTAB 1981); 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). These factors both weigh in favor of a finding of likelihood of confusion.

As for the marks, we must compare them “in their entirety as to appearance, sound, connotation and commercial impression.” *Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005) (quoting *du Pont*, 177 USPQ at 567). That is, we may not dissect the marks into their various components. *In re Nat’l Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985); see also *Franklin Mint Corp. v. Master Mfg. Co.*, 667 F.2d 1005, 212 USPQ 233, 234 (CCPA 1981). 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 and services offered under the respective marks is likely to result. *San Fernando Elec.*

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*Mfg. Co. v. JFD Electronics Components Corp.*, 565 F.2d 683, 196 USPQ 1, 3 (CCPA 1977); *Spoons Rests. Inc. v. Morrison Inc.*, 23 USPQ2d 1735, 1741 (TTAB 1991). The focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. *See Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975).

Of course, one feature of a mark may be more significant than another, and it is not improper to give more weight to the dominant feature of a mark in determining its commercial impression. *In re Nat'l Data Corp.*, 224 USPQ at 751 (“There is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on consideration of the marks in their entireties. Indeed, this type of analysis appears to be unavoidable.”); *Price Candy Co. v. Gold Medal Candy Corp.*, 220 F.2d 759, 105 USPQ 266, 268 (CCPA 1955).

Here, the examining attorney contends that the literal component of applicant’s mark, C•PREME, “is the dominant portion because consumers will refer to applicant’s goods using this portion of the mark.” Examining Attorney’s Brief at 9. The examining attorney also argues that applicant’s mark and the cited mark are “phonetic equivalents,” in that applicant’s mark “could reasonably be pronounced ‘seh-preme,’ the equivalent of ‘supreme,’” and even if applicant’s mark is pronounced “see-preme” the marks would still sound quite similar. *Id.* at 9-10. Finally, the examining attorney points out that C•PREME is not found in the

dictionary, Office Action of May 1, 2012, and argues that it is merely a “creative spelling” of the word SUPREME.

We do not disagree that C•PREME is the dominant element of applicant’s mark, because it would be used by purchasers to request the goods. *M.C.I. Foods, Inc. v. Brady Bunte*, 96 USPQ2d 1544, 1551 (TTAB 2010); *see also, CBS, Inc. v. Morrow*, 708 F.2d 1579, 218 USPQ 198, 200 (Fed. Cir. 1983). Nevertheless, we disagree that this literal element, which is not an actual word, is sufficiently similar to the actual word “supreme” for confusion to result. In fact, there is no evidence that there are any words in the English language which include an individual letter separated from the rest of the word by a symbol such as applicant’s “dot” or “•.” More importantly, there is no similarity whatsoever between the first two characters of the respective marks, “SU” and “C•,” and the mere fact that registrant’s mark and the literal portion of applicant’s mark end in PREME, which is not itself an English-language word, is not enough for the marks to create similar overall commercial impressions. Furthermore, the dictionary definitions reveal that the cited mark means “of the highest quality, degree,” making it laudatory and therefore weak and not entitled to a broad scope of protection.<sup>3</sup> *Palm Bay Imports*, 396 F.3d at 1369, 73 USPQ2d at 1692; *Truescents LLC v. Ride Skin Care LLC*, 81 USPQ2d 1334, 1341 (TTAB 2006). In short, C•PREME and SUPREME look

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<sup>3</sup> See Merriam-Webster definition included with Office Action of February 21, 2012, <http://www.merriam-webster.com/dictionary/supreme>, and Dictionary.com definition included with Office Action of August 22, 2011, <http://dictionary.reference.com/browse/supreme?=66>.

different because one appears to be a word and the other does not, sound different because there is not a long or short “u” sound in the literal portion of applicant’s mark<sup>4</sup> and convey different meanings because SUPREME has commonly-understood meanings while C•PREME does not mean anything.

Furthermore, while we accept that C•PREME is the dominant element of applicant’s mark, the design element of that mark is large (and larger than the literal element), distinctive and impossible to ignore, even if we were permitted to do so, which we are not. There is nothing about the design which calls to mind or suggests the word SUPREME. To the contrary, the “grinning circular head” appears similar to the letter “C,” the first portion of the literal element of applicant’s mark, which is entirely absent from the cited mark.

We have not ignored that both marks include the letters “PREME,” but on balance find that the parties’ marks create entirely different overall commercial impressions. This factor therefore weighs against a finding of likelihood of confusion.

Weighing the factors about which there is evidence or argument together, we find that the dissimilarity of the marks is dispositive, and outweighs the fact that the goods and channels of trade are identical. *Kellogg Co. v. Pack’em Enterprises Inc.*, 951 F.2d 330, 21 USPQ2d 1142, 1145 (Fed. Cir. 1991). Use of applicant’s mark for applicant’s goods is not likely to cause source confusion.

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<sup>4</sup> See pronunciation of “supreme” included with the Dictionary.com definition attached to the August 22, 2011 Office Action.

**Disclaimer Requirement**

Under Section 6(a) of the Act, “[t]he Director may require the applicant to disclaim an unregistrable component of a mark otherwise registrable,” such as a component which is merely descriptive under Section 2(e)(1). Failure to comply with a disclaimer requirement is a ground upon which registration may be refused. *See In re Slokevage*, 441 F.3d 957, 78 USPQ2d 1395, 1399-1400 (Fed. Cir. 2006); *In re Stereotaxis, Inc.*, 429 F.3d 1039, 77 USPQ2d 1087, 1089 (Fed. Cir. 2005).

A mark is deemed to be merely descriptive within the meaning of Section 2(e)(1) if it forthwith conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the goods. *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 82 USPQ2d 1828 (Fed. Cir. 2007); and *In re Abcor Development*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). A mark need not immediately convey an idea of each and every specific feature of the applicant’s goods in order to be considered merely descriptive; rather, it is sufficient that the mark describes one significant attribute, function or property of the goods. *In re H.U.D.D.L.E.*, 216 USPQ 358 (TTAB 1982); and *In re MBAssociates*, 180 USPQ 338 (TTAB 1973). Whether a mark is merely descriptive is determined not in the abstract, but in relation to the goods or services for which registration is sought, the context in which it is being used on or in connection with the goods, and the possible significance that the mark would have to the average purchaser of the goods because of the manner of its use. *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979). It is settled that “[t]he question is not whether someone presented with only



the mark could guess what the goods or services are. Rather, the question is whether someone who knows what the goods or services are will understand the mark to convey information about them.” *In re Tower Tech Inc.*, 64 USPQ2d 1314, 1316-17 (TTAB 2002).

Here, the examining attorney’s disclaimer requirement is based on the finding that C•PREME is an intentional misspelling of the laudatory and therefore descriptive word SUPREME. As explained in connection with the likelihood of confusion refusal, we disagree that C•PREME will be perceived as a misspelling of SUPREME. Unlike the cited mark, applicant’s mark does not appear to be wording at all, because the initial “C” stands alone and is separated from PREME (which is also not a word) by the character “•,” which is not standard English punctuation. And to the extent that it is perceived as wording, applicant’s mark comprises the mere initial “C” separated by a nonstandard character from the term PREME, and the term PREME is not sufficient, by itself, to call to mind the word SUPREME, because the initial “C” is so different, in almost every way, including how it looks and sounds, from the initial syllable of the cited mark “SU.” In short, because we do believe that C•PREME is a misspelling of or calls to mind SUPREME, or is otherwise descriptive of anything, a disclaimer is not necessary or appropriate.

**Decision:** Because we find that use of applicant’s mark is not likely to cause confusion with registrant’s mark, and that the literal component of applicant’s mark is not descriptive, both the likelihood of confusion refusal and the disclaimer requirement are reversed.