

This Opinion is not a  
Precedent of the TTAB

Mailed: August 27, 2014

UNITED STATES PATENT AND TRADEMARK OFFICE

—  
Trademark Trial and Appeal Board

—  
*In re Mevotech Inc.*

—  
Serial Nos. 85338942 and 85339000

—  
Mark Harrison of Venable LLP for Mevotech Inc.

Colleen E. Mulcrone, Trademark Examining Attorney, Law Office 108 (Andrew Lawrence, Managing Attorney).

—  
Before Quinn, Bucher and Taylor,  
Administrative Trademark Judges.

Opinion by Quinn, Administrative Trademark Judge:

Mevotech Inc. (“Applicant”) filed applications to register the marks TTX – TERRAIN TOUGH EXTREME CHASIS PARTS (in standard characters) (“CHASIS PARTS” disclaimed),<sup>1</sup> and TTX CHASIS PARTS (in standard characters) (“CHASIS PARTS” disclaimed),<sup>2</sup> each for goods identified as follows:

---

<sup>1</sup> Application Serial Nos. 85338942, filed June 6, 2011, under Section 44(d) of the Trademark Act, 15 U.S.C. § 1044(d), with a claim of priority based upon Canadian Application Serial No. 1529579 filed May 27, 2011. Canadian Registration No. TMA832762 issued September 26, 2012.

<sup>2</sup> Application Serial No. 85339000, filed June 6, 2011, under Section 44(d) of the Trademark Act, 15 U.S.C. § 1044(d), with a claim of priority based upon Canadian Application Serial No. 1529580 filed May 27, 2011. Canadian Registration No. TMA832761 issued September 26, 2012.

automotive parts and accessories in the nature of automotive steering, alignment and suspension systems and structural parts for automotive steering, alignment and suspension systems, namely, upper and lower ball joints, inner tie rods, outer tie rods, control arms, control arm and ball joint assemblies, idler arms, pitman arms, stabilizer link kits, sway bar link kits, sway bar bushings, drag links, centre links, strut mounts, shock mounts, torsion bar mounts, control arm bushings, thrust arms, track bars, shims, spacers, wedges, nuts, bolts, washers, sleeves, bearings, braces, caps, bellows, bars and brackets (in International Class 12).

The Trademark Examining Attorney refused registration in each application under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that Applicant's mark, when applied to Applicant's goods, so resembles the previously registered mark TTX (in standard characters) for "vehicle suspension systems for automobiles, motorcycles, all-terrain vehicles, snowmobiles and bicycles" in International Class 12<sup>3</sup> as to be likely to cause confusion.

When the refusal was made final in each application, Applicant appealed. Applicant and the Examining Attorney filed briefs. The Board, on March 4, 2014, consolidated the appeals, and we will decide the appeals in this single opinion.

Applicant argues that there is no likelihood of confusion because each of its marks and the cited mark are "not nearly identical" and the goods are "sufficiently different." (Brief, p. 1).

The Examining Attorney maintains that the marks are similar, all of them beginning with the identical letters "TTX." The Examining Attorney asserts that

---

<sup>3</sup> Registration No. 3647703, issued June 30, 2009; Section 71 declaration accepted, Section 15 declaration acknowledged.

Serial Nos. 85338942 and 85339000

the goods are either identical in part or highly related because they are automotive suspension systems or parts therefor. In support of the refusal the Examining Attorney introduced excerpts of third-party websites, and third-party registrations.

Our determination under Section 2(d) is based on an analysis of all of the facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). 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 (CCPA 1976).

We initially consider the second *du Pont* factor regarding the similarity/dissimilarity between the goods. It is well settled that the goods of Registrant and Applicant need not be identical or competitive, or even be offered through the same channels of trade, to support a holding of likelihood of confusion. It is sufficient that the respective goods of Registrant and Applicant are related in some manner, and/or that the conditions and activities surrounding the marketing of the goods are such that they would or could be encountered by the same persons under circumstances that could, because of the similarity of the marks, give rise to the mistaken belief that they originate from the same source. *See Hilson Research, Inc. v. Society for Human Resource Management*, 27 USPQ2d 1423 (TTAB 1993). The issue here, of course, is not whether purchasers would confuse the goods, but rather whether there is a likelihood of confusion as to the source of these goods.

Serial Nos. 85338942 and 85339000

*L'Oreal S.A. v. Marcon*, 102 USPQ2d 1434, 1439 (TTAB 2012); *In re Rexel Inc.*, 223 USPQ 830 (TTAB 1984).

In making our determination regarding the relatedness of the goods, we must look to the goods as identified in the application and the cited registration. *See Octocom Sys., Inc. v. Houston Computer Servs., Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990); *In re Giovanni Food Co.*, 97 USPQ2d 1990, 1991 (TTAB 2011). Applicant's goods, in part, include "automotive parts and accessories in the nature of automotive suspension systems and structural parts for automotive suspension systems," followed by the identification of specific parts comprising the system; Registrant's goods are identified in relevant part as "vehicle suspension systems for automobiles."

Because Applicant's and Registrant's goods have no limitations or restrictions, it is presumed that the goods encompass all goods of the type identified, move in all trade channels normal for those goods, and are available to all classes of purchasers for those goods. *See Paula Payne Products Co. v. Johnson Publishing Co.*, 473 F.2d 901, 177 USPQ 76 (CCPA 1973); *Kalart Co. v. Camera-Mart, Inc.*, 258 F.2d 956, 119 USPQ 139 (CCPA 1958); *In re Linkvest S.A.*, 24 USPQ2d 1716 (TTAB 1992).

Registrant's identification of goods is broadly worded and, as such, the goods are deemed to be legally identical or, at the very least, highly related goods for purposes of the likelihood of confusion analysis.

Further, because the goods identified in the application and the cited registration are in part legally identical, we must presume that the channels of

Serial Nos. 85338942 and 85339000

trade and classes of purchasers are the same. *See In re Yawata Iron & Steel Co.*, 403 F.2d 752, 159 USPQ 721, 723 (CCPA 1968) (where there are legally identical goods, the channels of trade and classes of purchasers are considered to be the same); *American Lebanese Syrian Associated Charities Inc. v. Child Health Research Institute*, 101 USPQ2d 1022, 1028 (TTAB 2011). *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). The goods are likely to be sold through the same trade channels (*e.g.*, online retailers of automotive parts) to the same classes of purchasers (*e.g.*, automotive repair shops and ordinary consumers).

The Examining Attorney submitted five use-based third-party registrations which individually cover, all under the same mark, goods of the type involved herein, namely automotive suspension systems and parts for the systems. “Third-party registrations which cover a number of differing goods and/or services, and which are based on use in commerce, although not evidence that the marks shown therein are in use on a commercial scale or that the public is familiar with them, may nevertheless have some probative value to the extent that they may serve to suggest that such goods or services are of a type which may emanate from a single source.” *In re Mucky Duck Mustard Co.*, 6 USPQ2d 1467, 1470 n.6 (TTAB 1988), *aff’d*, 864 F.2d 149 (Fed. Cir. 1988). *See also In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-86 (TTAB 1993).

The record also includes excerpts of the websites of three third-party retailers, namely, NAPA, Advance Auto Parts, and Pepboys. These websites show automotive suspension, steering and alignment systems being sold in the same trade channel alongside parts and accessories for suspension systems. These suspension systems may be sold as a package of parts and accessories, including suspension components, brackets and hardware (that is, the same specific parts described in Applicant's application).

The legal identity of Registrant's and Applicant's goods, as well as the presumed overlap in trade channels and purchasers, are factors that cumulatively weigh heavily in favor of finding a likelihood of confusion.

We next turn to the first *du Pont* factor focusing on the similarity between Applicant's marks TTX – TERRAIN TOUGH EXTREME CHASIS PARTS and TTX CHASIS PARTS, and Registrant's mark TTX. We must compare the marks in their entirety as to appearance, sound, connotation and commercial impression to determine the similarity or dissimilarity between them. *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005), quoting *In re E. I. du Pont de Nemours & Co.*, 177 USPQ at 567. "The proper test is not a side-by-side comparison of the marks, but instead 'whether the marks are sufficiently similar in terms of their commercial impression' such that persons who encounter the marks would be likely to assume a connection between the parties." *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012) (citation omitted). The focus is

Serial Nos. 85338942 and 85339000

on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. *See Inter IKEA Sys. B.V. v. Akea, LLC*, 110 USPQ2d 1734, 1740 (TTAB 2014); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975). In comparing the marks, we are mindful that where, as here, the goods are in part legally identical, the degree of similarity between the marks necessary to find likelihood of confusion need not be as great as where there is a recognizable disparity between the goods. *Coach Servs., Inc. v. Triumph Learning LLC*, 101 USPQ2d at 1721; *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).

Although marks must be considered in their entireties, it is settled that one feature of a mark may be more significant than another, and it is not improper to give more weight to this dominant feature in determining the commercial impression created by the mark. *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985) (“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.”). In each of Applicant’s marks, the generic wording “CHASIS PARTS” (serving to identify the type or category of Applicant’s goods) is disclaimed. Further, the wording “TERRAIN TOUGH EXTREME” in one of Applicant’s marks is highly suggestive of

Serial Nos. 85338942 and 85339000

the purpose or use of Applicant's goods. Thus, we view "TTX" in each of Applicant's marks to be the dominant portion. *See, e.g., Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1846 (Fed. Cir. 2000), *quoting National Data*, 224 USPQ at 752 (Fed. Cir. 1983) ("Regarding descriptive terms, this court has noted that the descriptive component of a mark may be given little weight in reaching a conclusion on the likelihood of confusion."); *In re Dixie Rests., Inc.*, 105 F.3d 1405, 41 USPQ2d 1531, 1533-34 (Fed. Cir. 1997) ("DELTA," not the disclaimed generic term "CAFE," is the dominant portion of the mark THE DELTA CAFE). Moreover, purchasers in general are inclined to focus on the first word or portion in a trademark; in each of Applicant's marks, "TTX" is the first portion. *Presto Products, Inc. v. Nice-Pak Products, Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988) ("it is often the first part of a mark which is likely to be impressed upon the mind of a purchaser and remembered"). *See Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 73 USPQ2d at 1692.

Accordingly, the dominant portion, TTX, of Applicant's mark is identical to the entirety of Registrant's mark TTX. Applicant has adopted the entirety of Registrant's mark and merely added generic and disclaimed wording (or generic and highly suggestive wording) to it. *See Hunter Indus., Inc. v. Toro Co.*, 110 USPQ2d 1651, 1660-61 (TTAB 2014) ("Likelihood of confusion often has been found where the entirety of one mark is incorporated within another." PRECISION would appear to prospective purchasers to be a shortened form of PRECISION DISTRIBUTION CENTER). Applicant's marks TTX – TERRAIN TOUGH



Serial Nos. 85338942 and 85339000

EXTREME CHASIS PARTS and TTX CHASIS PARTS and Registrant's mark TTX are similar in sound, appearance and meaning.<sup>4</sup> Given these similarities, when the marks are considered in their entirety, the marks engender very similar overall commercial impressions.

The similarity between the marks is a factor that weighs in favor of a finding of a likelihood of confusion.

The relevant *du Pont* factors weigh in favor of a finding of likelihood of confusion among purchasers in the marketplace. It is reasonable for customers to assume, due to the similarities between Registrant's mark TTX and each of Applicant's marks, that Applicant's goods sold under its marks constitute a new or additional product line from Registrant, and that Applicant's marks are merely variations or a brand extension of Registrant's mark for the new or additional product line.

We conclude that purchasers familiar with Registrant's suspension systems for automobiles sold under the mark TTX would be likely to mistakenly believe, upon encountering Applicant's marks TTX – TERRAIN TOUGH EXTREME CHASIS PARTS and TTX CHASIS PARTS for automotive parts and accessories in the nature of automotive steering, alignment and suspension systems and structural parts for automotive steering, alignment and suspension systems, that the goods originate from or are associated with or sponsored by the same entity.

**Decision:** The refusal to register in each application is affirmed.

---

<sup>4</sup> The record is devoid of evidence showing that the letters "TTX" have any meaning in the industry. Thus, the letters appear to be arbitrary as used in connection with the involved goods.