

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Mailed:
October 31, 2013

UNITED STATES PATENT AND TRADEMARK OFFICE

—
Trademark Trial and Appeal Board

—
In re Main Line Urgent Care Centers, LLC

—
Serial No. 85470562

Hara K. Jacobs of Ballard Spahr LLP for Main Line Urgent Care Centers, LLC.

W. Wendy Jun, Trademark Examining Attorney, Law Office 103 (Michael Hamilton, Managing Attorney).

—
Before Lykos, Gorowitz, and Masiello, Administrative Trademark Judges.

Opinion by Gorowitz, Administrative Trademark Judge:

Main Line Urgent Care Centers, LLC (applicant) filed an application to register the mark CARESTAT, as amended, in standard character form for “medical services, namely, non-emergency and urgent out-patient health care services and occupational medicine services.”¹ Registration was refused pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground of likelihood of confusion

¹ Application Serial No. 85470562, filed November 11, 2011, based on Section 1(b) of the Trademark Act (intent-to-use); amendment to allege use filed on August 24, 2012, asserting December 31, 2011 as the date of first use and date of first use in commerce.

Serial No. 85470562

with the mark STAT CARE P.L.L.C. & design, as set forth below, for “physician services; health services”:



The refusal was made final in the Office action dated September 14, 2012. Applicant filed a request for reconsideration, which was denied. This appeal followed.

Our determination of the issue of likelihood of confusion is based on an analysis of all of the probative facts in evidence that are relevant to the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). *See also, In re Majestic Distilling Co., Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (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 (CCPA 1976). *See also, In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997).

We turn first to the *du Pont* factor of the similarity or dissimilarity of the services. As set forth in the *Dixie Restaurants* case:

² Registration No. 3150822, issued October 3, 2006; Section 8 Declaration accepted November 30, 2012; Acronym “P.L.L.C.” and Caduceus design disclaimed.

Likelihood of confusion must be determined based on an analysis of the mark as applied to the ... services recited in applicant's application vis-a-vis the ... services recited in [a] ... registration, rather than what the evidence shows the...services to be.

In re Dixie Restaurants Inc., 41 USPQ2d at 1534, quoting *Canadian Imperial Bank v. Wells Fargo Bank, N.A.*, 811 F.2d 1490, 1 USPQ2d 1813, 1815 (Fed. Cir. 1987).

Applicant's services are identified as "medical services, namely, non-emergency and urgent out-patient health care services and occupational medicine services" and the services in the cited registration are broadly identified as "physician services; health services." The examining attorney asserts that the services are "virtually identical." Applicant does not contest this characterization nor submit any argument asserting differences in the services. We agree with the examining attorney and find that the services are legally identical. This is because registrant's "physician services; health services" identified without any limitation as to the type necessarily encompass applicant's more narrowly defined "non-emergency and urgent out-patient health care services and occupational medicine services."

Looking next at the channels of trade and class of purchasers, we note the well-established principle "that absent restrictions in the application and registration, [identical] goods and services are presumed to travel in the same channels of trade to the same class of purchasers." *In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012). Thus, in the case at bar, because the services are legally identical, they are presumed to travel in the same channels of trade to the same classes of purchasers.

Looking next at the marks, there are two issues to decide: (1) the similarity between the cited mark and applicant's mark and (2) the strength of the cited mark. We begin our analysis by noting that "when marks would appear on virtually identical goods or services, the degree of similarity necessary to support a conclusion of likely confusion declines." *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992). The marks

at issue are CARESTAT and 

Acknowledging that both applicant's mark and the cited mark contain the words, "stat" and "care," applicant argues that the marks in their entireties engender different commercial impressions because of the order of these words.³ Applicant also argues that the entity designation and the Caduceus design in the cited mark further distinguish the marks. We disagree.

It is a well-established principle that, in articulating reasons for reaching a conclusion on the issue of likelihood of confusion, 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 a consideration of the

³ Although for purposes of this decision we accept applicant's contention that the word order of the cited mark is STAT CARE, that contention is not beyond question. The graphic layout of the cited mark could be interpreted as showing the word CARE overlaid upon (*i.e.*, in front of) the word STAT, such that the word order could reasonably be interpreted to be CARE STAT.

marks in their entireties. *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985).

The dominant literal portions of the marks at issue are CARESTAT and STAT CARE. We reach this conclusion by examining the mark in the cited registration. The mark includes STAT CARE in stylized form, the acronym, “P.L.L.C.” and a Caduceus design. Both the acronym and the design of the Caduceus have been disclaimed.

The acronym, “P.L.L.C.,” the legal entity designation for a “professional limited liability company” has no source-indicating capacity. *See, e.g., In re Packaging Specialists, Inc.*, 221 USPQ 917, 919 (TTAB 1984) (“the element ‘INC.’ being recognized, in trademark evaluation, to have no source indication or distinguishing capacity”). The Caduceus design is a medical insignia.⁴ In addition, when a mark comprises both a word and a design, the word is normally accorded greater weight because it would be used by purchasers to request the goods or services. *In re Appetito Provisions Co.*, 3 USPQ2d 1553, 1554 (TTAB 1987).

Thus, in determining the similarity of the marks, we give more weight to the dominant literal elements of the registered mark STAT CARE, which applicant has

⁴ We take judicial notice of the definition of Caduceus, which is “a medical insignia bearing a representation of a staff with two entwined snakes and two wings on top.” *Merriam-Webster's Medical Desk Dictionary* © 2005 Merriam-Webster, Incorporated; accessed at www.m-w.com. The Board may take judicial notice of dictionary definitions, *Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imp. Co.*, 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983), including online dictionaries that exist in printed format or have regular fixed editions. *In re Red Bull GmbH*, 78 USPQ2d 1375, 1377 (TTAB 2006).

adopted in reverse order. Applicant contends that in the cited mark, the word STAT is emphasized, thus stressing the speed of the care given, while in its mark, the emphasis is on CARE, thus stressing concern and empathy. We disagree.

Both of the marks suggest that the consumer will receive quick emergency care. It is of particular note that applicant has applied to register its mark in standard character form. “Standard character ... registrations are federal mark registrations that make no claim to any particular font style, color, or size of display and, thus, are not limited to any particular presentation.” *Citigroup Inc. v. Capital City Bank Group Inc.*, 637 F3d 1344, 98 USPQ2d 1253, 1256 (Fed. Cir. 2011). Thus, applicant’s mark could be depicted in the same or similar font, color and character size as the cited mark. For example, while applicant stresses that the word “STAT” is highlighted in the cited mark, it fails to acknowledge that it also has emphasized the word “STAT” in its own mark. See the specimen submitted on August 24, 2012:

CareSTAT Urgent Care is a walk-in medical facility for the treatment of nonlife threatening injuries and illnesses. We never require an appointment and are committed to providing immediate and comprehensive medical services.

We are your alternative to the hospital emergency room and your physician’s office. Why wait for hours in an emergency room, or for days for an appointment to see your doctor when you want medical care now? **CareSTAT** Urgent Care will take care of you quickly, when you need it most.

No appointment needed. Ever. And, we accept all major insurance.

Thus, both marks engender the same commercial impression. “[T]he reversal in one mark of the essential elements of another mark may serve as a basis for a

finding of no likelihood of confusion only if the transposed marks create distinctly different commercial impressions.” *In re Nationwide Industries Inc.*, 6 USPQ2d 1882, 1884 (TTAB 1988), (emphasis added). See also *Bank of America National Trust and Savings Assn. v. American National Bank of St. Joseph*, 201 USPQ 842, 845 (TTAB 1978), and cases cited therein.

The cases relied on by applicant to support its argument that the transposition of terms in a mark can avoid a likelihood of confusion are distinguishable from the case at bar since the commercial impressions of the marks in each of those cases were different. See for example *In re Mavest, Inc.*, 130 USPQ 40 (TTAB 1961) (finding no likelihood of confusion between the marks TOWN SQUIRES and SQUIRETOWN because transposition of words creates distinctly different commercial impressions); and *In re Akzona Incorporated*, 219 USPQ 94 (TTAB 1983) (finding no likelihood of confusion between SILKY TOUCH for synthetic yarns and TOUCH O’ SILK for men's dress shirts, sport shirts, and pajamas because of different commercial impressions). As discussed *supra*, the commercial impressions of applicant’s mark and the cited mark are the same.

Looking next at the strength of the marks, we agree that the terms CARESTAT and STAT CARE are weak when used in connection with medical care services, particularly urgent care services, which are services identified in both the application and the cited registration. This conclusion is based on the definitions of

the terms and applicant's evidence of third-party usage of the term STATCARE.⁵ Applicant's submitted definitions for "STAT" are "fast, quickly, immediately"⁶ and those submitted by the examining attorney are "with no delay: at once."⁷ The definition of "CARE" submitted by the examining attorney is "attentive assistance or treatment to those in need: a hospital that provides emergency care."⁸ While the suggestive nature of the cited mark does narrow its scope of protection, the Board has recognized that marks deemed "weak" are still entitled to protection against the registration by a subsequent user of a similar mark for closely related services. *In re Colonial Stores, Inc.*, 216 USPQ 793, 795 (TTAB 1982). We find that applicant's mark CARESTAT falls within the scope of protection due to registrant's mark STAT CARE.

This case is also distinguishable from all of the cases relied upon by applicant to support its argument regarding the limitation of the scope of protection that should be afforded the registered mark. In each of those cases, the marks at issue were different, the goods and/or services at issue were different, or both the marks and the goods or services at issue were different. *See for example General Mills Inc. v. Health Valley Foods*, 24 USPQ2d 1270, 1277-1278 (TTAB 1992) (FIBER ONE v.

⁵ Applicant submitted pages from 12 sites whose domain name includes the term STATCARE. While we consider this evidence in our determination of the strength of the mark, it is not sufficient to affect our decision in this case.

⁶ Definition from *Free Online Medical Dictionary* -Exhibit to August 29, 2012 Response to Office Action.

⁷ Definition from *Yahoo! Education* (education.yahoo.com) - Exhibit to April 3, 2013 Denial of Request for Reconsideration.

⁸ Definition from *Yahoo! Education* (education.yahoo.com) - Exhibit to April 3, 2013 Denial of Request for Reconsideration.

FIBER 7 for fiber cereal); *E. L. Bruce Co. v. American Termicide*, 285 F.2d 462, 128 USPQ 341 (CCPA 1960) (TERMICIDE v. TERMINIX for termite control products and services); and *G.H. Mumm & Cie v. Desnoes & Geddes Ltd.*, 917 F.2d 1292, 16 USPQ2d 1635 (Fed. Cir. 1990) (Design consisting of a diagonal red stripe for champagne v. the words RED STRIPE for beer). In the case at bar, applicant's mark consists of the inversion of the dominant portion of the cited mark, and the services are identical.

Several cases relied on by applicant merit further discussion. In the first case, *In re Hartz Hotel Services Inc.*, 102 USPQ2d 1150 (TTAB 2012), the Board found no likelihood of confusion between that applicant's mark GRAND HOTELS NYC for "hotel services" and GRAND HOTEL for "hotel and restaurant services" and for a variety of other goods and services (e.g., soap and shampoos, note pads, tote bags, towels, luggage service, and golfing and recreational swim services). Evidence in that case included prior registrations owned by the applicant for the marks GRAND HOSPITALITY for "hotel services," with a disclaimer of "hospitality"; GRAND BAR & LOUNGE for "restaurant and bar services," with a disclaimer of "bar & lounge"; and ChelseaGrandHotel for "reservation services, namely, making reservations for lodging." The applicant's ownership of the foregoing registrations incorporating the dominant word GRAND differentiates this case from the case at bar.

In the second case, *Carefirst of Maryland, Inc. v. FirstHealth of the Carolinas, Inc.*, 77 USPQ2d 1492, 1510 (TTAB 2005), the marks at issue were

“Firstcarolinacare” for “health insurance claims administration services and health care maintenance organizations” and “Carefirst” for “membership in health maintenance organizations.” The addition of the word “Carolina” between the words “first” and “care” in applicant’s mark distinguished it from opposer’s mark Carefirst since it indicated the geographic location of applicant’s services and interfered with the interaction between the words CARE and FIRST which was so prominent in the other mark. In the case at bar, applicant’s entire mark is a transposition of the dominant portion of the cited mark, with the only literal difference consisting of the addition of the acronym “P.L.L.C.,” which has no trademark significance.

The final case, decided by the District Court for the Eastern District of Virginia, addressed infringement, not registration, and accordingly was governed by different standards. In that case, *Carefirst of Maryland, Inc. d/b/a CareFirst Blue Cross Blue Shield v. First Care, P.C.*, 350 F.Supp.2d 714, 73 USPQ2d 1833, 1840 (E.D. VA 2004), the Court found that the plaintiff never used “CareFirst” without “Blue Cross Blue Shield.” In our likelihood of confusion analysis, the Board is not permitted to consider any additional wording that may appear in the evidence of use. *See Ultracashmere House Ltd. v. Springs Mills*, 828 F.2d 1580, 4 USPQ2d 1252, 1254 (Fed. Cir. 1987). This is so because the issue before the Board in this proceeding is registrability and not use.

Applicant also alleges that the customers of both applicant’s and registrant’s services employ a high degree of care when purchasing healthcare services. In

support of this allegation, applicant relies on *Carefirst of Maryland, v. FirstHealth*, 77 USPQ2d at 1503-1504. This reliance is misplaced. In that case, the Board determined that consumers of healthcare insurance and related services such as HMO services will proceed cautiously and deliberately in making their choice. *Id.* While purchasing healthcare insurance or HMO services may allow consumers sufficient time to deliberate in making their choices, urgent out-patient health care services may not. The recitation of services in the application specifically includes these services and they are covered by the broad recitation of services in the cited registration. Moreover, applicant has not provided any evidence to support its allegation and hence it is not persuasive. Further, even if we accept that purchasers of urgent healthcare services exercise a heightened degree of care in purchasing such services, we are not persuaded that the degree of care will avoid a likelihood of confusion, since the fact that “the relevant class of buyers may exercise care does not necessarily impose on that class the responsibility of distinguishing between similar trademarks for similar goods. Human memories even of discriminating purchasers are not infallible.” *In re Research and Trading Corp.*, 793 F.2d 1276, 230 USPQ 49, 50 (Fed. Cir. 1986) (internal citation omitted). Accordingly, we find the *du Pont* factor relating to sophistication of customers to be neutral.

Having considered all the evidence and argument on the relevant *du Pont* factors, even that not discussed here, we find that applicant’s mark CARESTAT for “medical services, namely, non-emergency and urgent out-patient health care

services and occupational medicine services” is likely to cause confusion with the



cited registration for the mark for “physician services; health services.” Moreover, to the extent that any of applicant's points raises a doubt about likelihood of confusion, that doubt is required to be resolved in favor of the prior registrant. *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 840, 6 USPQ2d 1025 (Fed. Cir. 1988); and *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289, 1290 (Fed. Cir. 1984).

Decision: The refusal to register based on a likelihood of confusion under Section 2(d) of the Trademark Act is affirmed.