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Mailed:  
2/19/2014

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Champion Dent Craft, Inc.

Serial No. 85698477

Matthew H. Swyers of The Trademark Company for Champion Dent Craft, Inc.

Vivian Micznik First, Trademark Examining Attorney, Law Office 114 (K. Margaret Le, Managing Attorney).

Before Quinn, Taylor and Ritchie,  
Administrative Trademark Judges.

Opinion by Quinn, Administrative Trademark Judge:

Champion Dent Craft, Inc. ("applicant") filed, on August 8, 2012, an intent-to-use application to register the mark shown below



("DENT" and "INC." disclaimed) for "repair of automobiles;  
repair of automobiles, namely, paintless dent repair" in

International Class 37. Applicant makes the following claim:

"The color(s) black, red and purple is/are claimed as a feature of the mark." The application also includes the following description of the mark:

The mark consists of [a] semi circle that is black, red and purple. Within the semi circle is CHAMPION in black stylized font with DENT CRAFT below it in red stylized font outlined in black. The C in CHAMPION and the D in DENT are intertwined. To the right of CRAFT is, INC. in smaller red stylized font outlined in black.

The trademark examining attorney refused registration under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that applicant's mark, when used in connection with applicant's services, so resembles the previously registered marks, set forth below, as to be likely to cause confusion.

**DENT KRAFTERS** ("DENT" disclaimed) (in typed form)

for "automobile body repair" in International Class 37;<sup>1</sup>

**CHAMPION AUTO STORES** ("AUTO STORES" disclaimed) (in typed form)

for "maintenance of automobiles" in International Class 37;<sup>2</sup>

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<sup>1</sup> Registration No. 1801687, issued October 26, 1993; renewed.

<sup>2</sup> Registration No. 1817137, issued January 18, 1994; renewed.

and the mark shown below



("AUTO STORES" and "AUTO PARTS STORES" disclaimed)

for "maintenance, restoration and/or repair of automobiles" in International Class 37.<sup>3</sup>

The later two registrations, Registration Nos. 1817137 and 1821086, are owned by the same entity.

When the refusals were made final, applicant appealed. Applicant and the examining attorney filed briefs.

Applicant argues that its mark is different from each of the cited marks, and that its services "differ significantly" from the services identified in each of the cited registrations. Applicant also asserts that the trade channels for the services are different, that the services are marketed in different manners, and that purchasers are sophisticated. Applicant further points to the absence of actual confusion during the coexistence of the involved marks. In urging that the refusal be reversed, applicant submitted applicant's affidavit (and related exhibits), and copies of third-party registrations.

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<sup>3</sup> Registration No. 1821086, issued February 15, 1994; renewed.

The examining attorney maintains that the marks are similar "because the applicant's mark shares the term CHAMPION as a first word with two of the registered marks, and combines DENT with a form of CRAFT in the remaining registered mark." (Brief, unnumbered p. 3). The services are related, according to the examining attorney, and automobile maintenance and repair are rendered in the same trade channels. In support of the refusal, the examining attorney introduced third-party registrations showing that in each instance the same entity has registered the same mark for automobile maintenance and repair; and excerpts of third-party websites showing that the same entity offers both types of services, often under the same mark.

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 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").

With respect to the two registrations owned by one of the registrants, we will focus our attention on that registrant's mark CHAMPION AUTO STORES in typed form, given that of the two registered marks, it is the one most similar to applicant's mark, and both of registrant's marks cover essentially the same services. See *In re Max Capital Group Ltd.*, 93 USPQ2d 1243, 1245 (TTAB 2010).

We initially turn to consider the second *du Pont* factor regarding the similarity/dissimilarity between the services. It is well settled that the services of applicant and each registrant 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 services of applicant and each registrant are related in some manner, and/or that the conditions and activities surrounding the marketing of the goods and/or services 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); *In re International Telephone & Telegraph Corp.*, 197 USPQ 910, 911

(TTAB 1978). The issue, of course, is not whether purchasers would confuse the services, but rather whether there is a likelihood of confusion as to the source of the services. *In re Rexel Inc.*, 223 USPQ 830 (TTAB 1984).

We make our determination regarding the similarities between the services, channels of trade and classes of purchasers based on the services as they are identified in the application and cited registrations, respectively. See *Octocom Systems Inc. v. Houston Computers Services, Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990).

Applicant's services are identified as "repair of automobiles; repair of automobiles, namely, paintless dent repair." Registrant's services rendered under the mark DENT KRAFTERS reads "automobile body repair," and the other registrant's services, rendered under the mark CHAMPION AUTO STORES, are "maintenance of automobiles."

Applicant's "paintless dent repair" is legally identical to the one registrant's "automobile body repair" as a subset thereof. Further, applicant's "repair of automobiles" is legally identical to the other registrant's "maintenance of automobiles."

We also note that there are no limitations in applicant's or registrants' identifications of services. See *Genesco Inc. v. Martz*, 66 USPQ2d 1260, 1268 (TTAB 2003) ("Given the in-part

identical and in-part related nature of the parties' goods, and the lack of any restrictions in the identifications thereof as to trade channels and purchasers, these clothing items could be offered and sold to the same classes of purchasers through the same channels of trade."); and *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."). Accordingly, we presume that the services are rendered in the same trade channels (e.g., automobile repair shops, car dealership service shops, garages, body shops and the like), and to the same classes of purchasers, including ordinary consumers who own automobiles.

Lest there be any question on the close relationship, if not virtual identity between the involved services, the examining attorney's evidence of several use-based third-party registrations shows that the same entity has registered the same mark for services of the types identified in the application and cited registrations (i.e., automobile repair, automobile maintenance, and automobile body repair). "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 examining attorney also submitted excerpts of third-party websites showing that it is common for the same entity to offer the types of services at issue in this appeal, often under the same mark.

In the face of the examining attorney's evidence and the well-established case law cited above, applicant makes a feeble attempt to distinguish the services, arguing that "there is little, if any, relation between the services of the applicant and the goods and services found in the cited marks." (Brief, p. 14). In making its misguided arguments, applicant relies upon extrinsic evidence, namely the affidavit of Devin Grant Hamden and related exhibits. It is apparent from the affidavit that Mr. Hamden is affiliated with applicant, although the affidavit lacks any information regarding his official capacity. In any event, Mr. Hamden makes several factual allegations, all of which are irrelevant to our analysis. Mr. Hamden states that applicant's services are rendered by a "mobile repair shop" and marketed to automobile dealers in southwestern Virginia and



southern West Virginia, whereas one registrant operates an automobile painting and repair shop in California, and the other registrant runs a retail store that sells automotive parts in Minnesota. Mr. Hamden also states that while applicant markets its services through newspaper advertisements, business cards, radio commercials, printed brochures and its website, neither registrant markets its services in the same manners.

Mr. Hamden's affidavit is not persuasive. An applicant may not restrict the scope of the services covered in its application or in the cited registration(s) by argument or extrinsic evidence. *In re Bercut-Vandervoort & Co.*, 229 USPQ2d 763, 764 (TTAB 1986). Thus, any specific differences between the *actual* nature of the services are irrelevant in our analysis. As noted above, none of the identifications of services includes any of the limitations highlighted by applicant. Nor is the geographic region in which applicant and each of the registrants actually do business relevant. Unless explicitly restricted, a trademark registration affords nationwide rights and we may only "consider geographic limitations . . . in the context of a concurrent use proceeding." *Enterprise Rent-A-Car Co. v. Advantage Rent-A-Car Inc.*, 62 USPQ2d 1857, 1861 (TTAB 2002), *aff'd*, 330 F.3d 1333, 66 USPQ2d 1811 (Fed. Cir. 2003).

The legal identity or substantial similarity between the services, and the presumed overlap in trade channels and classes of purchasers are factors that weigh heavily in favor of a finding of likelihood of confusion.

We now direct our attention to the first *du Pont* factor of the similarity/dissimilarity between the marks. 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, 1690 (Fed. Cir. 2005), quoting *In re E. I. du Pont de Nemours & Co.*, 177 USPQ at 567. Under the first *du Pont* factor, 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 that confusion as to the source of the services offered under the respective marks is likely to result. 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 (TTAB 1975). Moreover, in comparing the marks, we are mindful that where, as here, applicant's services are legally identical to each registrant's services, the degree of similarity necessary to find likelihood

of confusion need not be as great as where there is a recognizable disparity between the services. *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).

Applicant's mark CHAMPION DENT CRAFT, INC. and design is similar to registrant's typed mark DENT KRAFTERS shown in Registration No. 1801607. The "DENT CRAFT" portion of applicant's mark and the entirety of registrant's mark are very similar in sound and appearance, and are essentially identical in meaning. We have not ignored the CHAMPION portion of applicant's mark, which is the first word in the mark. We find, however, that the remaining portion DENT CRAFT, which is essentially identical to the entirety of registrant's mark DENT KRAFTERS, outweighs any differences. This includes any difference in stylization and colors present in applicant's mark. See *In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1910 (Fed. Cir. 2012) (a registrant is entitled to all depictions of a standard character or typed mark regardless of the font style, size, or color, and not merely "reasonable manners" of depicting the mark). In view of the similarities, the marks engender similar overall commercial impressions. In

making this finding, we have kept in mind that the services rendered under these marks are legally identical.

We next turn to compare applicant's mark with registrant's typed mark CHAMPION AUTO STORES shown in Registration No. 1817137. It is well 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.").

With respect to this registrant's mark, the dominant portion clearly is the word CHAMPION. The generic portion, AUTO STORES, is disclaimed and plays no source-identifying function. *See, e.g., In re Binion*, 93 USPQ2d 1531, 1534 (TTAB 2009). The dominant portion of registrant's mark is identical to the first word in applicant's mark. Notwithstanding our analysis above, purchasers in general are inclined to focus on the first word or portion in a trademark, in this case, CHAMPION. *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 Fondée En 1772*, 73 USPQ2d at 1692. The marks are similar in sound, appearance and meaning (with CHAMPION connoting the best or superior services). These similarities result in applicant's mark CHAMPION DENT CRAFT, INC. and design and registrant's mark CHAMPION AUTO STORES engendering similar overall commercial impressions.

The similarities between applicant's mark and each registrant's mark weigh in favor of a finding of likelihood of confusion.

Applicant introduced, in an attempt to limit the scope of protection of each of the registered marks, ten third-party registrations of marks incorporating "CHAMP," "CHAMPION," "DENT" or "CRAFT" covering automobile repair and maintenance services, or, in two instances, automobile parts or tools. Absent evidence of actual use, these third-party registrations have little probative value because they are not evidence that the marks are in use on a commercial scale or that the public has become familiar with them. *In re Mighty Leaf Tea*, 601 F.3d 1342, 94 USPQ2d 1257, 1259 (Fed. Cir. 2010), citing *Palm Bay Imports, Inc.*, 73 USPQ2d at 1693 ("The probative value of third-party trademarks depends entirely upon their usage."); *Smith Bros. Mfg. Co. v. Stone Mfg. Co.*, 476 F.2d 1004, 177 USPQ 462,

463 (CCPA 1973) (the purchasing public is not aware of registrations reposing in the USPTO); *Productos Lacteos Tocumbo S.A. de C.V. v. Paleteria La Michoacana Inc.*, 98 USPQ2d 1921, 1934 (TTAB 2011). See also *Olde Tyme Foods Inc. v. Roundy's Inc.*, 961 F.2d 200, 22 USPQ2d 1542, 1545 (Fed. Cir. 1992) ("As to strength of a mark, however, registration evidence may not be given any weight."). Accordingly, this sixth *duPont* factor is neutral.

Applicant next contends that automobile maintenance and repair services are bought by knowledgeable and discriminating purchasers. According to Mr. Hamden, applicant's customers "exercise a very high level of sophistication in choosing the services offered under [applicant's] mark," and he assumes the same for registrants' customers because of the expense of automobile repairs. As identified in the application and registrations, the automobile maintenance and repair services, and the automobile body repair services, are not limited to expensive jobs costing thousands of dollars; the services would include relatively inexpensive work, such as oil changes, lubrications, fluid replacements, and touch-up body repairs. However, even assuming that such services also may be relatively expensive, involving a careful purchase, it is settled that even sophisticated purchasers are not immune from source confusion, especially in cases such as the instant one involving very

similar marks and related services. See *In re Research Trading Corp.*, 793 F.2d 1276, 230 USPQ 49, 50 (Fed. Cir. 1986), citing *Carlisle Chemical Works, Inc. v. Hardman & Holden Ltd.*, 434 F.2d 1403, 168 USPQ 110, 112 (CCPA 1970) ("Human memories even of discriminating purchasers...are not infallible."). See also *In re Decombe*, 9 USPQ2d 1812 (TTAB 1988). We find that the similarity between the marks and the relationship between the services sold thereunder outweigh any presumed sophisticated purchasing decision. See *HRL Associates, Inc. v. Weiss Associates, Inc.*, 12 USPQ2d 1819 (TTAB 1989), *aff'd*, *Weiss Associates, Inc. v. HRL Associates, Inc.*, 902 F.2d 1546, 14 USPQ2d 1840 (Fed. Cir. 1990) (similarities of goods and marks outweigh sophisticated purchasers, careful purchasing decision, and expensive goods).

Mr. Hamden states that applicant is unaware of any actual confusion with any of the cited marks since applicant first used its mark in January 2012. Applicant's assertion, in this *ex parte* proceeding, is entitled to little weight. See *In re Majestic Distilling Co., Inc.*, 65 USPQ2d at 1205 ("uncorroborated statements of no known instances of actual confusion are of little evidentiary value"). See also *In re Bisset-Berman Corp.*, 476 F.2d 640, 177 USPQ 528, 529 (CCPA 1973) (stating that testimony of applicant's corporate president's unawareness of instances of actual confusion was not conclusive

that actual confusion did not exist or that there was no likelihood of confusion); *In re Binion*, 93 USPQ2d at 1536; *In re 1st USA Realty Professionals Inc.*, 84 USPQ2d 1581, 1588 (TTAB 2007); and *In re Kangaroos U.S.A.*, 223 USPQ 1025, 1026-27 (TTAB 1984). In any event, the record is devoid of probative evidence relating to the extent of use of applicant's and registrants' marks and, thus, whether there have been meaningful opportunities for instances of actual confusion to have occurred in the marketplace. See *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1847 (Fed. Cir. 2000). We do note, however, that applicant only recently began using its mark in January 2012; thus, the time of contemporaneous use of the marks has been relatively short. Accordingly, the *du Pont* factor of the length of time during and conditions under which there has been contemporaneous use of the marks without evidence of actual confusion is considered neutral.

We have carefully considered all of the evidence made of record pertaining to the issue of likelihood of confusion, as well as all of the arguments related thereto, including any evidence and arguments not specifically discussed in this opinion. We conclude that purchasers familiar with each registrant's services sold under their respective marks would be likely to mistakenly believe, upon encountering applicant's mark



for its services, that the services originated from or are associated with or sponsored by the same entity.

Lastly, to the extent that any of the points raised by applicant raise a doubt about likelihood of confusion, that doubt is required to be resolved in favor of the prior registrants. *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 (Fed. Cir. 1984).

**Decision:** The refusal to register is affirmed.