

This Opinion is Not a  
Precedent of the TTAB

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UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board

*In re MS Electronics LLC*

Serial No. 85755706

Wade Kerrigan and Kris Kappel of Husch Blackwell LLP,  
for MS Electronics LLC.

Jean H. Im, Trademark Examining Attorney, Law Office 101,  
Ronald R. Sussman, Managing Attorney.

Before Bucher, Wellington, and Wolfson,  
Administrative Trademark Judges.

Opinion by Wolfson, Administrative Trademark Judge:

MS Electronics LLC (“Applicant”) seeks registration on the Principal Register of  
the mark **KORD** (in standard characters) for goods ultimately amended to:

Audio equipment, namely, speakers, woofers, sub-woofers,  
tweeters, mid-range driver in the nature of electrical  
transducers for speakers, amplifiers, wireless  
transmitters, wireless receivers, digital to analog  
converters, and cross-overs in the nature of electrical  
devices for dividing audio signals into separate frequency  
bands, and operating manuals and descriptive manuals  
issued in connection therewith

in International Class 9.<sup>1</sup>

<sup>1</sup> Application Serial No. 85755706 was filed on October 16, 2012, based on Applicant’s  
intent to use the mark in commerce under Section 1(b) of the Trademark Act.

The Trademark Examining Attorney has refused registration of Applicant's mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), contending that Applicant's use of its mark for its identified goods is likely to cause confusion with the mark **KORDZ** (in standard character format) for "Cable connectors; Home theater products, namely, LCD; Electronic interconnectors [sic] for audio and video signals" in International Class 9.<sup>2</sup>

When the refusal was made final, Applicant appealed and filed a request for reconsideration. After the Examining Attorney denied the request for reconsideration, the appeal was resumed. We affirm the refusal to register.

### **Likelihood of Confusion**

Our determination under Trademark Act § 2(d) is based on an analysis of the probative facts in evidence that are relevant to the factors bearing on a likelihood of confusion. *See In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973); *see also Palm Bay Imp., Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 73 USPQ2d 1689 (Fed. Cir. 2005); *In re Majestic Distilling Co., Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003); *In re Dixie Rests. Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997). In considering the evidence of record on these factors, we keep in mind that "[t]he fundamental inquiry mandated by Section 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks." *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976). *See also In re Azteca Rest. Enters., Inc.*, 50 USPQ2d 1209 (TTAB 1999).

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<sup>2</sup> Reg. No. 3812273, registered June 29, 2010 on the Supplemental Register.

The Marks

Turning first to the marks, we must compare them “in their entirety as to appearance, sound, connotation and commercial impression.” *Palm Bay*, 73 USPQ2d at 1691 (quoting *du Pont*, 177 USPQ at 567). Similarity in any one of these elements may be sufficient to find the marks confusingly similar. *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988); see *In re 1st USA Realty Profls, Inc.*, 84 USPQ2d 1581, 1586 (TTAB 2007). The test, under the first *du Pont* factor, 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 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 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).

Applicant’s mark is **KORD**. Registrant’s mark is **KORDZ**. Both marks are obvious misspellings of the recognized word “cord,” replacing the initial letter “c” with the letter “k.” The only difference between the marks is in the final “z” at the end of the registered mark, which is simply an alternative phonetic equivalent of the proper plural ending (with an “s”). The fact that Registrant uses the letter “z” rather than “s” to form the pluralization of its mark does not avoid a finding of similarity between the marks. See *Fleetwood Co. v. Mende*, 298 F.2d 797, 132 USPQ 458, 460 (CCPA 1962) (TINTZ is a phonetic spelling of “tints”; likelihood of

confusion found between TINTZ and TINT ‘N SET); *cf. In re Carlson*, 91 USPQ2d 1198, 1201 (TTAB 2009) (finding URBANHOUSING merely descriptive; “HOUSING will be recognized as a misspelling of the descriptive word HOUSING. It is, as we have stated, a phonetic equivalent.”). Moreover, we disagree with Applicant’s assertion that the letter “z” dominates the mark because it is a rarely used letter. The letter “k” in place of the initial letter “c” is also fairly unusual, as shown by the numerous third-party registrations submitted by Applicant to prove the registered mark is weak. Although Applicant cited nearly fifty third-party registrations, only seven of them have substituted the letter “k” for the “c” in “cord”; the rest properly spell the word “cord” or “chord” or use plural variations thereof, as discussed more fully below.

In short, Applicant’s mark will be readily perceived as a play on the word “cord,” and Registrant’s mark as the plural of the same word. It is well established that the singular and plural forms of essentially the same term do not generally create such different commercial impressions that confusion would be avoided; marks consisting of the singular and plural forms of the same root term are essentially the same mark. *See Wilson v. Delaunay*, 245 F.2d 877, 114 USPQ 339, 341 (CCPA 1957) (no material difference between the singular and plural forms of ZOMBIE such that the marks were considered the same mark); *In re Strategic Partners, Inc.*, 102 USPQ2d 1397, 1399 (TTAB 2012) (“the difference between the singular form ANYWEAR ... and the plural form ANYWEARS ... is not meaningful”); *In re Pix of Am., Inc.*, 225 USPQ 691, 692 (TTAB 1985) (the pluralization of NEWPORT is “almost totally insignificant” in terms of likelihood of confusion among purchasers).

Applicant and Registrant's marks are extremely similar in appearance and pronunciation, and identical in meaning and overall commercial impressions. The first *du Pont* factor favors a finding of likelihood of confusion.

#### The Number and Nature of Similar Marks

As to the third-party registrations, they are of little assistance to Applicant as evidence that the registered mark is so weak that the slight difference between it and Applicant's mark distinguishes the marks. In general, absent evidence of actual use, third-party registrations have little probative value to prove that the cited mark is weak because they are not evidence that the marks are in use on a commercial scale or that the public has become familiar with them. *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 U.S. Patent and Trademark Office); *Productos Lacteos Tocumbo S.A. de C.V. v. Paeteria La Michoacana Inc.*, 98 USPQ2d 1921, 1934 (TTAB 2011). More specifically in this case, none of the marks that substitute the letter "k" for "c" as in Registrant's mark uses the term "kord" (or "kords") by itself; in each case the term is accompanied by distinctive or suggestive additional wording. The seven registrations are:

**AUTAC RE-TRAK-TUL KORDS** and design for  
"retractable electric cords";<sup>3</sup>

**KORD KING** for "electrical power devices, namely, electrical power supply cords, electrical power cord sets comprised of electrical power extension cores, detachable electrical power cords, plug connectors, and electrical

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<sup>3</sup> Reg. No. 2303321.

wiring safety harnesses other than for vehicles or sports purposes”;<sup>4</sup>

**KORD-VALMARK** for “laboratory equipment, namely, petri dishes”;<sup>5</sup>

**KORD-VALMARK LABWARE PRODUCTS** for “laboratory equipment, namely, petri dishes”;<sup>6</sup>

**KOIL KORD** for “electric cords”;<sup>7</sup>

**Koil Kord** for “electric cords”;<sup>8</sup> and

**Koiled Kords** for “electric cords.”<sup>9</sup>

As can be seen, the marks incorporate additional wording that distinguishes them from the registered mark, **KORDZ**. Moreover, the registrations for **KORD-VALMARK** and **KORD-VALMARK LABWARE PRODUCTS** are owned by the same company, and the registrations for **KOIL KORD**, **Koil Kord** and **Koiled Kords** are owned by the same company. Thus, the relevancy of these marks is further diminished. The remaining third-party marks (which incorporate “cord” in its proper spelling, or which use the dissimilar term “chord”) are even more disparate than Registrant’s mark. Many do not cover goods or services in any way related to Registrant’s electronic connectors. Of those that do, they support only that the word “cord,” *by itself*, has a descriptive significance when used in connection with electrical cables or connectors, *i.e.*, cords. Although Registrant’s

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<sup>4</sup> Reg. No. 3919208.

<sup>5</sup> Reg. No. 2877149.

<sup>6</sup> Reg. No. 2843028.

<sup>7</sup> Reg. No. 4501136.

<sup>8</sup> Reg. No. 3451559.

<sup>9</sup> Reg. No. 3500406.

mark has been registered on the Supplemental Register for goods that may be informally referred to as “cords,” and would thus be considered highly suggestive in connection with the goods involved, the third-party registrations do not establish that the cited mark is so weak that the public would not be confused upon encountering Applicant’s mark used on related goods. Even weak marks are entitled to protection, including marks registered on the Supplemental Register. *See In re The Clorox Company*, 578 F.2d 305, 198 USPQ 337, 340 (CCPA 1978) (ERASE is confusingly similar to STAIN ERASER on the Supplemental Register, both for stain removers); *Nike Inc. v. WNBA Enterprises LLC*, 85 USPQ2d 1187, 1198 (TTAB 2007) (“[W]hile star designs in and of themselves may be weak, there is no evidence which would effectively diminish the scope of protection to be accorded opposer’s S and star design mark as a whole”).

#### Relationship of the Goods

Turning to the goods, we base our evaluation on the goods as they are identified in the registration and application. *Octocom Systems, Inc. v. Houston Computers Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990). *See also Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001 (Fed. Cir. 2002); *In re Risesmart, Inc.*, 104 USPQ2d 1931, 1934 (TTAB 2012). It is settled that it is not necessary that the respective goods be identical or even competitive in order to find that they are related for purposes of our likelihood of confusion analysis. The goods need only be sufficiently related that consumers would be likely to assume, upon encountering the goods under similar marks, that the goods

originate from, are sponsored or authorized by, or are otherwise connected to the same source. *Coach Services Inc. v. Triumph Learning LLC*, 101 USPQ2d at 1722.

Registrant's goods include cable connectors and electronic interconnectors for audio and video signals. A "connector" is "a device for keeping two parts of an electric circuit in contact."<sup>10</sup> Cable connectors and electronic interconnectors connect one device with another in the manner of a cord, one definition of which is "a small flexible insulated electrical cable having a plug at one or both ends used to connect a lamp or other appliance with a receptacle."<sup>11</sup> Applicant's audio equipment includes some goods that are typically connected via cable connectors, such as speakers, woofers, sub-woofers, and tweeters (which are types of loudspeakers designed to reproduce low or high frequencies). Loudspeakers do not function independently but are typically employed as part of an audio system. *See, e.g.*, the online article "What Do You Need for Home Theater?" submitted by the Examining Attorney.<sup>12</sup> The article outlines the components needed to build one's own audiovisual system, including a TV, receiver, speakers and a subwoofer, as well as "speaker cables, audio cables and video cables."<sup>13</sup> In view of their complementary nature, the goods are likely to be purchased together and used in conjunction with each other. *See, e.g., In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223

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<sup>10</sup> At <http://www.oxforddictionaries.com>. The Board may take judicial notice of dictionary definitions, including on-line versions of dictionaries available in print. *See University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co., Inc.*, 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

<sup>11</sup> At <http://www.merriam-webster.com>.

<sup>12</sup> At <http://www.cruchfield.com>; attached to April 21, 2014 denial of request for reconsideration, 8 TTABVue 2.

<sup>13</sup> *Id.*



USPQ 1289, 1290 (Fed. Cir. 1984) (MARTIN'S for bread is confusingly similar to MARTIN'S for cheese, in part because the goods are complementary and often used and consumed together); *In re Sela Prods., LLC*, 107 USPQ2d 1580 (TTAB 2013) (finding that in the course of purchasing a television, audio or home theater system, purchasers would encounter both surge protectors (marketed specifically for television, audio and home theater equipment) and wall mounts and brackets (used in connection with same); *In re Cook Medical Technologies LLC*, 105 USPQ2d 1377, 1380 (TTAB 2012) (medical guiding sheaths used in conjunction with catheters are closely related, complementary goods).

Applicant argues that Registrant only sells HDMI cables, splitters and extenders, “designed to be used solely with HDMI and Ethernet cables,”<sup>14</sup> relying upon screen prints of Registrant’s website. Applicant contends that these products are not related to its audio equipment as enumerated. However, an Applicant may not restrict the scope of the goods covered in the cited registration by introducing extrinsic evidence. *In re Midwest Gaming & Entertainment LLC*, 106 USPQ2d 1163, 1165 (TTAB 2013), *In re La Peregrina Ltd.*, 86 USPQ2d 1645, 1647 (TTAB 2008), *In re Bercut-Vandervoort & Co.*, 229 USPQ2d 763, 764 (TTAB 1986). Thus, the specific differences between the *actual* nature of the goods are irrelevant in our analysis. To the contrary, the identification of goods in the cited registration is broadly worded to include all types of electronic connectors for audio signals, including connectors used with Applicant’s audio equipment. Registrant’s identified goods are not

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<sup>14</sup> Applicant’s Brief, p. 15, 11 TTABVue 16.

restricted to high-performance HDMI cables and interfaces. Accordingly, we must assume that the goods are complementary products.

The Conditions under which and Buyers to whom Sales are Made

Applicant further argues that consumers are sophisticated and will therefore exercise a high degree of care in selecting Registrant's products. "[P]roducts sold in connection with the KORDZ mark are targeted exclusively to consumers who are knowledgeable of the differences in high-end cables and who are highly likely to be repeat consumers into the market."<sup>15</sup> However, Registrant's customers and channels of trade are not restricted. Furthermore, even careful purchasers can be confused as to source when presented with highly similar marks used on related and/or complementary goods. *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.")). More specifically, there is nothing in the record to show that Applicant's customers are not equally sophisticated. As noted above, there are no restrictions on either Applicant's or Registrant's identification of goods, and the channels of trade also appear to be related. The Examining Attorney submitted copies of two third-party websites (Best Buy and Crutchfield) showing that complete home theaters include goods such as those sold by Applicant as well as by Registrant.<sup>16</sup> For example, at [www.bestbuy.com](http://www.bestbuy.com), information is provided on how to set up and customize one's own home theater in

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<sup>15</sup> Applicant's Appeal Brief at 15, 11 TTABVue 16.

<sup>16</sup> Attached to April 21, 2014 denial of Applicant's request for reconsideration.

an online promotional article entitled “Home Theater Buying Guide.” The various components needed, according to the article, include LCD TVs and HDMI cables, as well as audio speakers and subwoofers. The Crutchfield website provides similar information, as noted above, in the online article “What Do You Need for Home Theater?” The fact that the Best Buy website offers the various components of such home theater system on different pages within its website does not reduce the chance of confusion, inasmuch as the various components appearing on each separate page are offered under a single brand, such as Samsung, LG, and RCA. Accordingly, these *du Pont* factors weigh in favor of a finding of likelihood of confusion.

Weighing the *du Pont* Factors

In conclusion, although Registrant’s mark is weak and thus entitled to a limited scope of protection, that protection extends to prevent the registration of Applicant’s very similar mark for closely related goods. The record shows that the goods are complementary and will likely travel through the same distribution channels to the same purchasers.

***Decision:*** The refusal to register Applicant’s mark KORD under Section 2(d) of the Trademark Act is affirmed.