

This Opinion is Not a
Precedent of the TTAB

Mailed: December 10, 2014

UNITED STATES PATENT AND TRADEMARK OFFICE

—
Trademark Trial and Appeal Board
—

In re Moll Anderson Productions, LLC
—

Serial No. 85777948
—

Robert L. Brewer, Martha Allard, and Mary Katherine Schweihs of Bass, Berry & Sims, PLC, for Moll Anderson Productions, LLC.

Sara N. Benjamin, Trademark Examining Attorney, Law Office 110,
Chris A. F. Pedersen, Managing Attorney.

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

Opinion by Gorowitz, Administrative Trademark Judge:

Moll Anderson Productions, LLC (“Applicant”) seeks registration on the Principal Register of the mark ANDERSON WORLD MEDIA (in standard characters) for

Musical sound recordings, namely, audio and video cassettes, compact discs, digital versatile discs and videotapes featuring instrumental and vocal music; digital music downloadable from the Internet in International Class 9; and

Production and distribution of television shows and movies; motion picture film production in International Class 41.¹

The term “WORLD MEDIA” has been disclaimed.

The Trademark Examining Attorney refused registration of Applicant’s mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d) on the ground that Applicant’s mark so resembles the registered mark MIKE ANDERSON MEDIA in standard characters for “audio and video recording services; media production services, namely, video and film production; photographic and video services, namely photographic and video capture; video editing; video production services,” in International Class 41² as used in connection with Applicant's identified goods and services, it is likely to cause confusion or mistake or to deceive.³

¹ Application Serial No. 85777948 was filed on November 13, 2013, based upon Applicant’s allegation of a *bona fide* intention to use the mark in commerce under Section 1(b) of the Trademark Act.

² Registration No. 4167885, issued July 3, 2012. The word “MEDIA” was disclaimed. Mike Anderson identifies a living individual whose consent was of record.

³ During prosecution, the Examining Attorney also cited registrations for the marks ANDERSON PUBLISHING for publishing services, namely, publication of books, newsletters and journals, electronic publication of text and graphic works of others on CD-ROMS and other computer readable media; ANDERSON for, *inter alia*, transportation of passengers and/or and their belongings transportation reservation services; travel agency services, arranging travel tours; travel guide services and conducting sightseeing tours for others; and arranging for ticket reservations for shows and other entertainment events; entertainment in the nature of tours; and ANDERSON AUDIO VISUAL (in standard characters and in stylized form) for, *inter alia*, rental of stereo and audio-visual presentation systems; rental of audio, electronic and video equipment, specifically movie projectors and their accessories, overhead projectors and their accessories, video screens, radios, amplifiers and televisions; audio-visual presentation systems consulting in the nature of system requirements for particular installations. All of these citations were withdrawn.

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

I. Evidentiary Issues.

As a preliminary matter, the Examining Attorney has objected to Applicant's evidentiary references to third-party registrations that were first discussed in the Appeal Brief and were never made of record.

Evidence submitted after the filing of an appeal is untimely and will not ordinarily be considered by the Board. Trademark Rule 2.142(d); 37 CFR § 2.142(d). Similarly, "evidentiary references made in briefs but not supported by timely submissions may not be considered." Trademark Manual of Board Procedures (TBMP) § 1203.02 (e). *See In re the Procter & Gamble Co.*, 105 USPQ2d 1119, 1120 (TTAB 2012) (Applicant withdrew references in its brief to third-party registrations it inadvertently failed to attach to responses during examination).

The evidentiary references were to seventeen third-party registrations for marks containing the term ANDERSON for goods and services unrelated to those at issue in this case. Applicant did not introduce any of the registration certificates or the electronic equivalent thereof from the USPTO's electronic databases, but rather simply referred to the registrations its argument. "It is well-established that in order to make third-party registrations properly of record, Applicant should submit copies of the registrations themselves, or the electronic equivalent thereof from the

USPTO's electronic databases" *In re City of Houston*, 101 USPQ2d 1534, 1536 n.5 (TTAB 2012).

Accordingly, the objections are sustained and the references to the seventeen registrations have not been considered. We note that even if the registrations had been considered, it would not affect the outcome herein.

II. Likelihood of Confusion.

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).

A. Similarity or Dissimilarity of Marks.

We start our analysis with the first *du Pont* factor, the similarity of the marks. In comparing the marks we must consider the appearance, sound, connotation and commercial impression of the marks at issue. *Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005). The emphasis of our analysis must be on the recollection of the average purchaser who normally retains a general, rather than specific, impression

of trademarks. *In re Cynosure, Inc.*, 90 USPQ2d 1644, 1645 (TTAB 2009) (citing *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975)).

“While we analyze the marks in their entirety, 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 when evaluating the similarities of the marks.” *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985). Applicant argues that the “predominant” terms in the marks are “WORLD” and “MIKE.” Applicant’s argument is unpersuasive. The dominant feature is “often the first part of a mark, which is most likely to be impressed upon the mind of a purchaser and remembered.” *Presto Products Inc. v. Nice-Pak Products, Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988) (Likelihood of confusion found between KIDWIPES and KID STUFF for pre-moistened disposable towelettes). *See also Palm Bay Imports Inc.*, 73 USPQ2d at 1692 (“Veuve” is the most prominent part of the mark VEUVE CLICQUOT because “Veuve” is the first word in the mark and the first word to appear on the label); *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992) (upon encountering the marks, consumers will first notice the identical lead word).

In this case, the first portions of the marks are ANDERSON, which is a surname, and MIKE ANDERSON, which is a full name. It has long been held that when conflicting marks consist of a surname and a full name ending in the same surname, confusion is likely. As the Board stated in the *Modern Shoe Company* case:

We have here a surname “WALKER” and a full name “JOHNNIE WALKER”. The full name would represent an individual. The surname “WALKER” does not per se identify any particular individual but it does identify any and all persons who bear that surname, including “JOHNNIE WALKER”. And, it is not uncommon to identify an individual by a surname without reference to a first or Christian name, for example Nixon or Rockefeller in reference to well-known political figures. Thus, “WALKER” and “JOHNNIE WALKER” could be regarded as one and the same individual. These names when used as marks will create the same impression and such impression is greatly enhanced because they are used on directly competitive goods, even as to price. We are of the opinion that the circumstances give rise to a likelihood of confusion.

Modern Shoe Company v. B. B. Walker Shoe Company, 170 USPQ 530, 531 (TTAB 1971) (internal citations omitted). This holding is not affected by claims that the “surname” and/or “full name” are the names of either an applicant or a registrant. See, *Nina Ricci S.A.R.L. V. E.T.F. Enterprises Inc.*, 889 F.2d 1070, 12 USPQ2d 1901 (Fed. Cir. 1989) (VITTORIO RICCI for handbags, clothing and retail store services in the field of clothing is likely to cause confusion with NINA RICCI for clothing and accessories even though Vittorio Ricci was the name of defendant's principal); *Jack Winter Inc. v. Lancer of California, Inc.*, 183 USPQ 445, 446 (TTAB 1974) (DAVID WINTER for clothing is likely to cause confusion with JACK WINTER for clothing). Thus, on their own, the dominant portions of the marks, ANDERSON and MIKE ANDERSON, are similar.

Having considered the similarities between the dominant portions of the marks, we now look at the marks in their entirety. In Applicant’s mark, ANDERSON WORLD MEDIA, the descriptive phrase “WORLD MEDIA,” which has been

disclaimed, has been added to the dominant word ANDERSON. In the mark MIKE ANDERSON MEDIA, the descriptive term “MEDIA,” which has also been disclaimed, has been added to the dominant term MIKE ANDERSON. In general, the addition of merely descriptive matter does not obviate a finding of similarity. *In re Chatam Int’l Inc.*, 380 F.3d 1340, 71 USPQ2d 1944 (Fed. Cir. 2004) (“Viewed in their entireties with non-dominant features appropriately discounted, the marks [GASPAR’S ALE for beer and ale and JOSE GASPAR GOLD for tequila] become nearly identical”). In this case, not only are the dominant portions of the marks “nearly identical,” but the subordinate portions are very similar since the only difference is Applicant’s inclusion of the descriptive word “WORD” before “MEDIA.”

Accordingly, we find that, considering the marks in their entireties, the first *du Pont* factor favors a finding of likelihood of confusion.

B. Number and Nature of Similar Marks in Use on Similar Goods and Services.

Next, we consider the sixth *du Pont* factor, the number and nature of similar marks in use on similar goods and services. With respect to this factor, Applicant contends that its application should be approved since the five registrations,⁴ that were cited against the grant of its application have co-existed on the Register. Applicant’s contention presumes that the prior registration of a particular mark should be of some persuasive authority in handling later applications involving similar marks. However, we are not privy to the record of the prior registrations

⁴ Six registrations were cited, however, two were owned by the same party.

and are bound to make a decision based on the record before us. *See AMF Inc. v. American Leisure Products, Inc.*, 177 USPQ 268, 269 (CCPA 1973); *In re International Taste, Inc.*, 53 USPQ2d 1604 (TTAB 2000); and *In re Sunmarks Inc.*, 32 USPQ2d 1470 (TTAB 1994). Moreover, third-party registrations are generally entitled to little weight in determining the strength of a mark because they are not evidence that the mark is in actual use in the marketplace or that consumers have been exposed to the mark. *See Fort Howard Paper Co. v. Kimberly-Clark Corp.*, 221 USPQ 732 (TTAB 1984); and *In re Hub Distributing Inc.*, 218 USPQ 284 (TTAB 1983).

Accordingly, we find the sixth *du Pont* factor to be neutral.

C. Similarity or dissimilarity and nature of the goods and services.

We continue our analysis with the second *du Pont* factor and look at the relationship between the goods and services at issue. When determining the relationship between the goods and services,

[t]he authority is legion that the question of registrability of an applicant's mark must be decided on the basis of the identification of goods [and services] set forth in the application regardless of what the record may reveal as to the particular nature of an applicant's goods, the particular channels of trade or the class of purchasers to which sales of the goods [and rendering of services] are directed.

Octocom Systems, Inc. v. Houston Computers Services Inc., 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990). *See also Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d

1157, 1161-1162 (Fed. Cir. 2014). Applicant's goods and services are identified in its application as:

musical sound recordings, namely, audio and video cassettes, compact discs, digital versatile discs and videotapes featuring instrumental and vocal music; digital music downloadable from the Internet" and "production and distribution of television shows and movies; and motion picture film production;

and the services in the cited registration are identified as:

audio and video recording services; media production services, namely, video and film production; photographic and video services, namely photographic and video capture; video editing; video production services.

Applicant argues that "it is necessary that the marks have more in common than to both be used in the same broad field of media to support a claim of likelihood of confusion." Appeal Brief, p. 7, 12 TTABVUE at 15. The record supports a finding that the marks, as identified, are used or intended to be used in connection with closely related goods and services, in the media field.

The Examining Attorney submitted copies of over fifty third-party registrations each of which includes both Applicant's goods/services and the services in the cited registration, and serves to suggest that the goods and services are of a kind that may emanate from a single source. See *In re RiseSmart Inc.*, 104 USPQ2d 1931, 1934-1935 (TTAB 2012); *In re Infinity Broad. Corp.*, 60 USPQ2d 1214, 1217-18 (TTAB 2001); and *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-86 (TTAB 1993). See, for example,

Reg. No. 3356779 for the mark **INCREDIBLE STEPS**
Services include: television show production, motion

picture film production **AND** audio recording, video production, and video editing;

Reg. No. 3567085 for the mark **China in a Box**

Services include: distribution of television programs for others, motion picture film production, television show production **AND** audio recording, film production, photographic and video capture and video editing;

Reg. No. 3728124 for the mark **BILLY MAJESTIC**

Services include: production and distribution of television shows and movies, production of independent motion pictures **AND** media production services namely, video and film production;

Registration No. 4197931 for the mark **Epiphany Media Group**

Services include: motion picture film production, production and distribution of television shows and movies **AND** film and video production, photographic and video capture, video editing and video production services; and

Reg. No. 4234334 for the mark **VIVA ELVIS**

Goods and Services include: audio cassettes, video cassettes, compact discs, digital versatile discs, video tapes featuring musical performances, musical sound recordings, downloadable musical sound recordings **AND** production of musical video recordings.

Exhibits to Office Action dated February 28, 2013.

In addition, one of the services in the cited registration is “film production.” Applicant’s “motion picture film production” is included in the broad phrase “film production.” As such, not only are Applicant’s goods and services closely related to the services in the cited registration, but they are also legally identical to some of the services. Accordingly, the second *du Pont* factor favors a finding of likelihood of confusion.

D. Conclusion

Having considered all the evidence and argument on the relevant *du Pont* factors, whether discussed herein or not, we find that Applicant's mark, ANDERSON WORLD MEDIA is likely to cause confusion with the mark in the cited registration, MIKE ANDERSON MEDIA.

Decision: The refusal to register Applicant's mark ANDERSON WORLD MEDIA is affirmed.