

This Opinion is Not a
Precedent of the TTAB

Mailed: July 22, 2015

UNITED STATES PATENT AND TRADEMARK OFFICE

—
Trademark Trial and Appeal Board

—
In re Peace Love World, LLC

—
Serial No. 85906882

—
Mark Terry of the Office of Mark Terry,
for Peace Love World, LLC.

Lyndsey Kuykendall, Trademark Examining Attorney, Law Office 102,
Mitchell Front, Managing Attorney.

—
Before Bucher, Mermelstein and Adlin,
Administrative Trademark Judges.

Opinion by Adlin, Administrative Trademark Judge:

Peace Love World, LLC (“Applicant”) seeks registration of the mark LOVE IS MY RELIGION, in standard characters, for “Hooded sweat shirts; Hooded sweatshirts; Long-sleeved shirts; Open-necked shirts; Shirts; Shirts and short-sleeved shirts; T-shirts.”¹ The Examining Attorney refused registration under Section 2(d) of the Act on the ground that Applicant’s mark so resembles the registered mark LOVE IS RELIGION, in standard characters, for “Beachwear;

¹ Application Serial No. 85906882, filed April 17, 2013, alleging first use dates of April 19, 2012.

Bras; Caps; Flip flops; Gloves; Hats; Headbands; Hooded sweat shirts; Jackets; Leg warmers; Neckties; Scarves; Shirts; Shorts; Socks; Sports bra; Sweat shirts; T-shirts; Tank tops; Underwear; Wristbands,” that use of Applicant’s mark in connection with Applicant’s goods is likely to cause confusion or mistake or to deceive.² After the refusal became final, Applicant appealed and Applicant and the Examining Attorney filed briefs.

Likelihood of Confusion

Our determination under Section 2(d) is based on an analysis of all 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. *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.”).

Turning first to the goods and channels of trade, they are in-part identical, as Applicant and Registrant both offer “hooded sweat shirts,” “shirts” and “t-shirts.” Moreover, neither identification of goods includes any limitations with respect to channels of trade. Where, as here, Applicant’s and Registrant’s goods are in-part

² Registration No. 3958576, issued May 10, 2011.

legally identical, we must presume that the channels of trade and classes of purchasers for those goods are also the same. *See 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); *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).

The legal identity (in part) of Applicant's and Registrant's goods and their overlapping channels of trade and classes of purchasers not only weigh heavily in favor of a finding of likelihood of confusion, but also reduce the degree of similarity between the marks necessary to find a likelihood of confusion. *In re Viterra*, 101 USPQ2d at 1908; *In re Mighty Leaf Tea*, 601 F.3d 1342, 94 USPQ2d 1257, 1260 (Fed. Cir. 2010); *In re Max Capital Group Ltd.*, 93 USPQ2d 1243, 1248 (TTAB 2010).

Turning to the marks, we must compare them "in their entireties as to appearance, sound, connotation and commercial impression." *Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005) (quoting *du Pont*, 177 USPQ at 567). That is, we may not dissect the marks into their various components. *In re Nat'l Data Corp.*, 753

F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985); *see also Franklin Mint Corp. v. Master Mfg. Co.*, 667 F.2d 1005, 212 USPQ 233, 234 (CCPA 1981).

Here, the marks are quite similar in how they look and sound, differing only by Applicant's addition of the word "my" to Registrant's mark. When applicants add terms to previously-registered marks, confusion is often found to be likely. *See e.g. Coca-Cola Bottling Co. v. Jos. E. Seagram & Sons, Inc.*, 526 F.2d 556, 188 USPQ 105, 106 (CCPA 1975) (confusion found likely between BENGAL and BENGAL LANCER & Design for related goods); *International Paper Co. v. Valley Paper Co.*, 468 F.2d 937, 175 USPQ 704 (CCPA 1972) (DATA for "writing, typewriter and printing paper" likely to be confused with DATA-SPEED for "paper sold in bulk rolls or bulk reams for conversion only into business forms"); *Hunter Indus., Inc. v. Toro Co.*, 110 USPQ2d 1651, 1660-61 (TTAB 2014) (PRECISION likely to be confused with PRECISION DISTRIBUTION CONTROL); *In re Fiesta Palms LLC*, 85 USPQ2d 1360 (TTAB 2007) (CLUB PALMS MVP for casino services likely to be confused with MVP for casino services offered to preferred customers identified by special identification cards); *In re Rexel Inc.*, 223 USPQ 830, 832 (TTAB 1984) ("we are firmly of the opinion that purchasers who encounter applicant's 'LITTLE GOLIATH' stapler kits and registrant's 'GOLIATH' large diameter woodcased pencils are likely to believe ... that both products emanate from or are in some way associated with the same source"); *Johnson Publishing Co. v. International Development Ltd.*, 221 USPQ 155 (TTAB 1982) (EBONY for cosmetics likely to be confused with EBONY DRUM for hairdressing and conditioner).

Applicant’s argument that “there is a difference of at least one word and at least two (2) letters between the cited mark and Applicant’s mark” essentially proves that the marks look and sound similar – the two letter word MY appears in the middle of Applicant’s four-word sixteen-letter mark and therefore, as the Examining Attorney pointed out in the February 27, 2014 Office Action, “it is likely that MY will get overlooked.” Indeed consumers are likely to focus on the identical first part of the marks (LOVE IS). See *Presto Products Inc. v. Nice-Pak Products, Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988) (“[I]t is often the first part of a mark which is most likely to be impressed upon the mind of a purchaser and remembered”); 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). Moreover, the last word in Applicant’s and Registrant’s marks is also identical.

Applicant’s argument that the marks convey different meanings is not well-taken. In both marks, “love” is depicted as “religion,” either as a general matter (LOVE IS RELIGION), or for a particular individual (LOVE IS MY RELIGION). According to Applicant itself, its mark conveys that “love ... is the personal religion of the speaker” while Registrant’s mark “conveys to a consumer that ‘love’ is the only religion in the world and that no other religions can exist.” Applicant’s Appeal Brief at 3. But in either formulation, love is the “speaker’s” religion, whether by

birth, choice or because there are no other religions. To the extent there are differences in connotation between the marks, they are not enough to prevent consumer confusion where the marks look and sound so similar, and are used for identical goods which are presumed to travel in the same channels of trade.

Similarly, while Applicant has introduced a number of third-party registrations for marks comprising “LOVE IS” followed by an additional word(s), that is not enough to prevent consumer confusion in this case because the marks are otherwise so similar and used for identical goods. *Cf. Juice Generation, Inc. v. GS Enterprises LLC*, ___ F.3d ___, ___ USPQ2d ___, Case No. 2014-1853 (Fed. Cir. July 20, 2015) (where shared components of marks at issue were the subject of a number of third-party registrations *and* the marks at issue had additional design and literal differences (not present in this case), finding of confusing similarity vacated and remanded).

Applicant argues that Registrant’s mark is weak and entitled to only a narrow scope of protection as a result of third-party usage and registration of similar marks. We disagree. As for the third-party registrations upon which Applicant relies, they are not by themselves evidence that the marks are in use on a commercial scale or that the public has become familiar with them. *See 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). And while Applicant has

established through website printouts that a number of the “LOVE IS” marks in the third-party registrations are in use, and that this component of Registrant’s mark may not be entitled to a broad scope of protection as explained in *Juice Generation*, none of the third-party marks are even close to as similar to Registrant’s mark as is Applicant’s. Indeed, none of the third-party marks upon which Applicant relies includes the word “religion,” or any word which looks or sounds like or conveys the same meaning as religion.³ Furthermore, as this is an *ex parte* proceeding, and “inasmuch as the cited mark is registered on the Principal Register, we must assume that it is at least suggestive.” *In re Fiesta Palms*, 85 USPQ2d at 1363 (citing *In re Dixie Rests., Inc.*, 105 F.3d 1405, 41 USPQ2d 1531, 1534-35 (Fed. Cir. 1997)).

Conclusion

In short, while Registrant’s mark LOVE IS RELIGION may or may not be entitled to protection against the third-party marks Applicant cites, it is entitled to protection against Applicant’s highly similar mark LOVE IS MY RELIGION, which also includes the word “religion” and is used for in-part identical goods which travel in the same channels of trade.

Decision: The Section 2(d) refusal to register Applicant’s mark is affirmed.

³ The third-party marks which Applicant has established are in use include LOVE IS ALWAYS LOVE, LOVE IS A VERB, LOVE IS LEGAL, LOVE IS THE KEY, LOVE IS BLONDE and LOVE IS THE ANSWER.