

<p>This Opinion is Not a Precedent of the TTAB</p>

Mailed: June 29, 2015

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re IBrand Accessories LLC

Serial No. 86185362

Matthew H. Swyers of The Trademark Company,
for IBrand Accessories LLC.

Michael P. Keating, Trademark Examining Attorney, Law Office 101,
Ronald R. Sussman, Managing Attorney.

Before Quinn, Zervas and Shaw,
Administrative Trademark Judges.

Opinion by Quinn, Administrative Trademark Judge:

IBrand Accessories LLC (“Applicant”) seeks registration on the Principal Register of the mark BULLETPROOF SCREEN PROTECTOR (in standard characters) (SCREEN PROTECTOR disclaimed) for “display screen protectors for providing shade and privacy specially adapted to electronic devices, namely, laptops, cell phones, and personal digital assistants” in International Class 9.¹

¹ Application Serial No. 86185362, filed February 5, 2014 under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), alleging a bona fide intention to use the mark in commerce.

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 for Applicant's goods, so resembles the previously registered mark BULLET-PROOF SHIELDS (in standard characters) for "protective sheet for covering laptop computers, MP3 players, ipods, personal digital assistance [sic], mobile phones and other electronics" in International Class 9² as to be likely to cause confusion.³

When the Examining Attorney made the refusal final, Applicant appealed. Applicant and the Examining Attorney filed briefs. We affirm the refusal.⁴

Applicant argues that the goods are different; more specifically, Applicant asserts that its goods "consist of a drop-proof, shock proof clear film placed over the screen of the named devices to dim the light emitted by the phone screen, thereby prohibiting the vision of what is displayed on the screen from a side view," and "also provide shade from the sun." (4 TTABVUE 10). Applicant contrasts its goods with Registrant's goods, which are "used with hard shell cases for [electronic devices]." *Id.* As to the marks, Applicant argues that the Examining Attorney improperly dissected the marks, and that any likelihood that consumers will be confused is

² Registration No.3640795, issued June 16, 2009. In passing we note that the identification impermissibly includes a registered trademark (Reg. No. 2835698 for IPOD), and that "personal digital assistance" should be "personal digital assistants."

³ We note that the cited registration recently passed its sixth anniversary. Office records do not show the filing as yet of a Section 8 affidavit of continued use, but as indicated in Section 8(a)(3) of the Trademark Act, 15 U.S.C. § 1058(a)(3), Registrant may file the affidavit within a grace period of six months after the sixth anniversary date. *See* Trademark Rule 2.160(a); TMEP § 1604.04 (2015). In any event, Applicant did not request a suspension of the appeal. *See* TBMP § 1213 (2014).

⁴ Citations to the briefs in this opinion are to the TTABVUE docket entry number and the electronic page number where the statement appears.

removed by the inclusion of the words “SCREEN PROTECTOR” in Applicant’s mark that explicitly tells consumers what they are buying, whereas the word “SHIELD” in Registrant’s mark “suggests a cover, protecting the hardware of the phone or device.” (4 TTABVUE 11). Applicant asserts that Applicant’s goods are sold via its website, www.ibrandaccessories.com, trade shows and social media, whereas Registrant’s goods are sold on Registrant’s website www.handstands.com and Amazon.com. (4 TTABVUE 11-12). Applicant also argues that its goods “are geared toward people who are interested in phone accessories with a purpose other than protecting the phone or device’s outer body, such as providing privacy and shade to allow users to be able to read their display screen in the sun,” contrasted with Registrant’s goods which target “people who are prone to dropping their device, and want a form of protection to keep the device from cracking and breaking.” (4 TTABVUE 12). Applicant introduced the affidavit of Muhammad Khalid.

The Examining Attorney maintains that the marks are similar and that the goods are identical. In support of the refusal, the Examining Attorney submitted dictionary definitions, and copies of pages retrieved from the websites of Applicant and Registrant, as well as those of third parties in the industry.

Our determination under Section 2(d) is based on an analysis of all of the facts in evidence that are relevant to the factors bearing on the likelihood of confusion. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). 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 (CCPA 1976).

With respect to the first *du Pont* factor, we must compare the marks in their entireties 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, 1691 (Fed. Cir. 2005), quoting *In re E. I. du Pont de Nemours & Co.*, 177 USPQ at 567. “The proper test is not a side-by-side comparison of the marks, but instead ‘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); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975).

Although marks must be considered in their entireties, it is 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 Applicant’s mark, the generic term “SCREEN PROTECTOR” has been disclaimed apart from the mark. In view of the generic nature of this disclaimed term, this portion of the mark plays no source-indicating function in this mark. *See, e.g., In re Dixie Rests., Inc.*, 105 F.3d 1405, 41 USPQ2d 1531, 1533-34 (Fed. Cir. 1997) (“DELTA,” not the disclaimed generic term “CAFE,” is the dominant portion of the mark THE DELTA CAFE). As to Registrant’s mark, the term “SHIELDS” is, at the very least, highly suggestive.

Accordingly, the dominant portion of Applicant’s mark, BULLETPROOF, is essentially identical to the dominant portion of Registrant’s mark, BULLET-PROOF. The marks BULLETPROOF SCREEN PROTECTOR and BULLET-PROOF SHIELDS are similar in appearance, sound, and meaning (suggesting that the goods will protect electronic device screens from forceful impacts). Given these similarities, the marks engender virtually identical overall commercial impressions.

The first *du Pont* factor weighs heavily in favor of a finding of likelihood of confusion.

As to the second *du Pont* factor, in making our determination regarding the relatedness of the goods, we must look to the goods as identified in the application and the cited registration. *See Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1162 (Fed. Cir. 2014), quoting *Octocom Sys., Inc. v. Houston Computer Servs., Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir.

1990); *In re Giovanni Food Co.*, 97 USPQ2d 1990, 1991 (TTAB 2011). Applicant's goods are identified as "display screen protectors for providing shade and privacy specially adapted to electronic devices, namely, laptops, cell phones, and personal digital assistants"; Registrant's goods are "protective sheet for covering laptop computers, MP3 players, ipods, personal digital assistance [sic], mobile phones and other electronics."

Because the goods identified in the cited registration have no limitations or restrictions, it is presumed that as recited the goods encompass all goods of the type identified. *See Paula Payne Products Co. v. Johnson Publishing Co.*, 473 F.2d 901, 177 USPQ 76 (CCPA 1973); *Kalart Co. v. Camera-Mart, Inc.*, 258 F.2d 956, 119 USPQ 139 (CCPA 1958); *In re Linkvest S.A.*, 24 USPQ2d 1716 (TTAB 1992). Thus, we must presume that Registrant's goods encompass all types of protective sheets, including those for providing shade and privacy. As such, the goods are legally identical. Moreover, in point of fact, the respective websites of Applicant and Registrant confirm that their goods are both in the nature of protective covers for the screens of electronic devices.

Inasmuch as the goods identified in the application and the cited registration are legally identical, we must presume that the channels of trade and classes of purchasers are the same. *See 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). *See also 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). The goods are likely to be sold through the same trade channels (*e.g.*, online retailers of accessories for electronic devices) to the same classes of purchasers (*e.g.*, ordinary consumers).

As indicated earlier, the record includes the affidavit of Mr. Khalid, an individual who apparently is affiliated with Applicant, yet no formal title or job responsibility is indicated. In any event, the affiant claims that his statements are based “upon my own knowledge.” Mr. Khalid believes that there is no likelihood of confusion between the marks. The affidavit is accompanied by pages from Applicant’s and Registrant’s websites.

Mr. Khalid makes numerous statements relating to the goods, which include the following: Applicant’s and Registrant’s goods are specifically different; and Applicant’s goods are marketed through its website, trade shows and social media, and are sold through its website and mobile retail stores, whereas Registrant’s goods are sold through Registrant’s website and Amazon.com.

Mr. Khalid’s statements, and the exhibits attached to the affidavit, are largely irrelevant to our analysis. An applicant may not restrict the scope of the goods covered in its application or in the cited registration by argument or 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, any specific differences between the *actual* natures of the goods are irrelevant in our analysis. As noted earlier, Applicant's and Registrant's goods comprise a sheet or film that offers protection for the screens of electronic devices. Further, neither of the identifications of goods includes any of the limitations in trade channels highlighted by Mr. Khalid.

The legal identity of the goods, and the presumed identity in trade channels and purchasers are factors that also weigh heavily in favor of a finding of likelihood of confusion.

We conclude that purchasers familiar with Registrant's "protective sheet for covering laptop computers, MP3 players, ipods, personal digital assistance [sic], mobile phones and other electronics" sold under the mark BULLET-PROOF SHIELDS would be likely to mistakenly believe, upon encountering Applicant's mark BULLETPROOF SCREEN PROTECTOR for "display screen protectors for providing shade and privacy specially adapted to electronic devices, namely, laptops, cell phones, and personal digital assistants," that the goods originate from or are associated with or sponsored by the same entity.

Decision: The refusal to register is affirmed.