

This Opinion is not a
Precedent of the TTAB

Mailed: April 13, 2015

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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In re Christopher A. Fahey, DBA Gravity Guitar Picks

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Serial No. 86250337
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Paul W. Reidl of the Law Office of Paul W. Reidl,
for Christopher A. Fahey.

Zhaleh Delaney, Trademark Examining Attorney, Law Office 116,
Michael W. Baird, Managing Attorney.

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Before Bucher, Mermelstein and Wolfson,
Administrative Trademark Judges.

Opinion by Bucher, Administrative Trademark Judge:

Christopher A. Fahey (“Applicant”), a resident of California, seeks registration on the Principal Register of the mark **SUNRISE** (*in standard character format*) for “guitar picks” in Int. Class 15.¹ Registration has been finally refused on the ground that Applicant’s mark is likely to cause confusion in view of the mark shown at right registered for “guitars.” Trademark Act Section 2(d), 15 U.S.C. § 1052(d). The English translation



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¹ Application Serial No. 86250337 was filed on April 11, 2014, based upon Applicant’s claim of first use anywhere and use in commerce since at least as early as January 22, 2014.

² Registration No. 4285269 issued on February 5, 2013.

provided in the registration of “Pukana La” is “sunshine, sunrise.” The gravamen of the Examining Attorney’s argument is her contention that inasmuch as “Pukana La” means “Sunrise,” the marks share identical connotations under “the doctrine of foreign equivalents.” The Office and Applicant have both argued that the similarity/dissimilarity of the marks is the dispositive factor herein.

Under the first *du Pont*³ factor, we focus on the similarity or dissimilarity of the marks in their entirety as to appearance, sound, connotation and commercial impression. Yet, when focusing on the perceptions of ordinary American consumers who are multilingual, we are tasked with calibrating a bewildering balance – namely weighing (1) the closeness with which the non-English-language term denotes the putative equivalent term in the English-language, against (2) the quite obvious and inevitable differences of sight and sound involved in comparisons of the English language expression with the untranslated non-English language term.

In applying the ideas drawn from cases such as *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1696 (Fed. Cir. 2005) and its progeny, Applicant poses the question as to whether the Office has established that Hawaiian is a “common, modern language.”

To the extent modern means something different from common, we find that Hawaiian is clearly a modern language. Despite concerted colonial attempts between 1896 and the 1960s to eradicate the language, this record speaks to the continued viability of the language and its contemporary significance to the Hawaiian people. The language has seen something of a revival over the past

³ See *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973).

several decades, and on this record we find that it qualifies as a living, modern language. Hawaiian cannot, for example, be placed into the same category as Ancient Greek – the prototype of a dead language.

Nonetheless, the doctrine of foreign equivalents will not be invoked where, as here, the non-English language at issue is obscure or unusual, that is, not spoken by an appreciable number of individuals sufficient to sustain a finding of a likelihood of confusion. Applicant has raised the question whether, under the facts of this case, the Hawaiian language is such a language. The record herein shows that approximately eighteen thousand Hawaiian language speakers live in the state of Hawaii and seven thousand more Hawaiian speakers live elsewhere in the United States. Moreover, there is substantially no population of Hawaiian speakers elsewhere around the globe. Given this set of facts, we agree with Applicant that the Hawaiian language cannot be characterized as a modern, common language, and hence, the doctrine of foreign equivalents does not apply. In the event that this doctrine is unavailable, the involved marks are totally dissimilar, and there is no basis for concluding that confusion is likely. *Kellogg Co. v. Pack'em Enterprises Inc.*, 951 F.2d 330, 21 USPQ2d 1142, 1145 (Fed. Cir. 1991).

Decision: The refusal to register Applicant's mark **SUNRISE** under Section 2(d) of the Lanham Act is hereby reversed.