

**This Opinion is Not a
Precedent of the TTAB**

Mailed: August 28, 2015

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Dretzka

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Serial No. 86396440

Gene Bolmarcich of the Law Offices of Gene Bolmarcich,
for Ann L. Dretzka.

Gilbert M. Swift, Trademark Examining Attorney, Law Office 109,
Dan Vavonese, Managing Attorney.

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Before Bergsman, Masiello and Hightower,
Administrative Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

Ann L. Dretzka (“Applicant”) seeks registration on the Principal Register of the mark INSPIRED GRIT (in standard characters) for “education services, namely, providing live and on-line coaching, training, seminars, courses, retreats, camps, and workshops in the field of personal development as it relates to helping people identify, set, and achieve personal life goals; providing live and on-line coaching in the field of personal development, namely, life coaching services in the field of self-

realization, talent utilization, and finding personal satisfaction in one's life," in International Class 41.¹

The Trademark Examining Attorney has refused registration of Applicant's mark under Section 2(d) of the Trademark Act of 1946, 15 U.S.C. § 1052(d), on the ground that Applicant's mark so resembles the previously registered mark GRIT (standard character form) for "educational services, namely, developing and conducting seminars and workshops in the field of leadership, teamwork and customer service," in Class 41, as to be likely to cause confusion.²

After the Examining Attorney made the refusal final, Applicant appealed to this Board. We reverse the refusal to register.

Our determination under Section 2(d) is based on an analysis of all of the 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 Co., 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 services. *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."). These factors, and any

¹ Application Serial No. 86396440 was filed on September 16, 2014, based upon Applicant's claim of first use anywhere at least as early as April 1, 2013 and first use in commerce since at least as early as August 3, 2014.

² Registration No. 3950161, registered February 8, 2011.

other *du Pont* factors relevant in the proceeding now before us, will be considered in this decision.

A. *The similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression.*

We turn first to the *du Pont* likelihood of confusion factor focusing on the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression. *In re E. I. du Pont De Nemours & Co.*, 177 USPQ at 567. In a particular case, “two marks may be found to be confusingly similar if there are sufficient similarities in terms of sound or visual appearance or connotation.” *Kabushiki Kaisha Hattori Seiko v. Satellite Int’l, Ltd.*, 29 USPQ2d 1317, 1318 (TTAB 1991), *aff’d mem.*, 979 F.2d 216 (Fed. Cir. 1992) (citation omitted). *See also Eveready Battery Co. v. Green Planet Inc.*, 91 USPQ2d 1511, 1519 (TTAB 2009) (citing *Krim-Ko Corp. v. Coca-Cola Co.*, 390 F.2d 728, 156 USPQ 523, 526 (CCPA 1968) (“It is sufficient if the similarity in either form, spelling or sound alone is likely to cause confusion.”)).

In comparing the marks, we are mindful that “[t]he 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). *See also San Fernando Electric Mfg. Co. v. JFD Electronics Components Corp.*, 565 F.2d 683, 196 USPQ 1, 3 (CCPA 1977); *Spoons Restaurants Inc. v.*

Morrison Inc., 23 USPQ2d 1735, 1741 (TTAB 1991), *aff'd mem.*, 972 F.2d 1353 (Fed. Cir. 1992).

The marks are similar in appearance and sound because they both include the word “Grit” and different because Applicant’s mark includes the additional word “Inspired.” Thus, Applicant’s mark incorporates the entirety of Registrant’s mark. While there is no explicit rule that likelihood of confusion automatically applies where a junior user’s mark incorporates the entirety of another mark, the fact that the cited registered mark is subsumed by Applicant’s mark increases the similarity between the two. *See, e.g., In re Toshiba Med. Sys. Corp.*, 91 USPQ2d 1266, 1271 (TTAB 2009) (applicant’s mark VANTAGE TITAN for medical magnetic resonance imaging diagnostic apparatus confusingly similar to TITAN for medical ultrasound diagnostic apparatus); *In re El Torito Rests., Inc.*, 9 USPQ2d 2002, 2004 (TTAB 1988) (applicant’s mark MACHO COMBOS for food items confusingly similar to MACHO for restaurant entrees); *In re Riddle*, 225 USPQ 630, 632 (TTAB 1985) (RICHARD PETTY’S ACCU TUNE for automotive service centers confusingly similar to ACCU-TUNE for automotive testing equipment).

The fact that Applicant’s mark INSPIRED GRIT includes the adjective “Inspired” to modify the word “Grit” suggests that Applicant’s INSPIRED GRIT services may be a variation of Registrant’s services. *Cf. In re United States Shoe Corp.*, 229 USPQ 707, 709 (TTAB 1985) (applicant’s CAREER IMAGE for women’s clothing stores and women’s clothing likely to cause confusion with CREST CAREER IMAGES for uniforms including items of women's clothing - the Board

observed that “Applicant’s mark would appear to prospective purchasers to be a shortened form of registrant’s mark.”).

The word “grit” is defined, inter alia, as “firmness of character; indomitable spirit; pluck.”³ The word “inspired” is defined as “aroused, animated, or imbued with the spirit to do something, by or as if by supernatural or divine influence.”⁴ The registered mark means and engenders the commercial impression of a person with a strong will and Applicant’s mark means and engenders the commercial impression of a person with an even stronger will. Thus, the marks have similar meanings and engender similar commercial impressions.

In view of the foregoing, we find that the similarity in appearance and sound of the marks outweighs the dissimilarities; and that the marks have similar connotations and commercial impressions.

B. The similarity or dissimilarity and nature of the services.

“This factor considers whether ‘the consuming public may perceive [the respective goods and services of the parties] as related enough to cause confusion about the source or origin of the goods and services.’” *In re St. Helena Hosp.*, 774 F.3d 747, 113 USPQ2d 1082, 1086 (Fed. Cir. 2014) (quoting *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 62 USPQ2d 1001 (Fed. Cir. 2002)). In making our determination regarding the relatedness of the services, we must look to the services as identified in the application and the cited registration. *See Octocom Sys., Inc. v. Houston Computers Servs., Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed.

³ *Dictionary.com* attached to the January 12, 2015 Office Action.

⁴ *Id.*

Cir. 1990); *In re Giovanni Food Co.*, 97 USPQ2d 1990, 1991 (TTAB 2011). It is sufficient that the respective services are related in some manner, and/or that the conditions and activities surrounding the marketing of the services are such that they would or could be encountered by the same persons under circumstances that could, because of the similarity of the marks, give rise to the mistaken belief that they originated from the same producer. *In re Melville Corp.*, 18 USPQ2d 1386 (TTAB 1991).

Applicant is rendering educational services to help people achieve life goals, self-realization, talent utilization, and personal satisfaction. Registrant, on the other hand, is providing educational services in the field of “leadership, teamwork and customer service.” The Trademark Examining Attorney argues that the services are related “because (1) both applicant and registrant provide educational services, providing seminars and workshops, and (2) the parties’ seminars and workshops of the parties are both in the same field, i.e. personal development of life skills such as leadership and teamwork.”⁵

First, the fact that both services are educational, providing seminars and workshops, does not in-and-of-itself make the services related. *See Bose v. QSC Audio*, 293 F.3d 1367, 63 USPQ2d 1303, 1310 (Fed. Cir. 2002) (“a broad general market category is not a generally reliable test of relatedness of products”); *Harvey Hubbell, Inc. v. Tokyo Seimitsu Co.*, 188 USPQ 517, 520 (TTAB 1975) (“In determining whether products are identical or similar, the inquiry should be

⁵ 6 TTABVUE 11.

whether they appeal to the same market, not whether they resemble each other physically or whether a word can be found to describe the goods of the parties.”).

Second, Applicant’s educational services do not involve “life skills such as leadership and teamwork.” As indicated above, Applicant’s seminars are in the field of helping people achieve life goals, self-realization, talent utilization, and personal satisfaction.

Nevertheless, we examine the evidence submitted by the Trademark Examining Attorney to determine whether the conditions surrounding the marketing of Applicant’s educational services in the field of helping people achieve life goals, self-realization, talent utilization, and personal satisfaction, on the one hand, and Registrant’s educational services in the field of “leadership, teamwork and customer service,” on the other hand, are such that they would be encountered by the same persons under circumstances that could give rise to the mistaken belief that they originate from a common source.

The Trademark Examining Attorney submitted an excerpt from one third-party website that arguably includes the services of both Applicant and Registrant: the Outward Bound “Southwest Leadership Semester” (outwardbound.org).⁶ The Outward Bound “Southwest Leadership Semester” website advertises a “50-day journey through the mountains, canyons, deserts, and rivers of one of the most beautiful and geologically stunning landscapes in the world” for “individuals seeking to begin a career in outdoor adventure education or those looking to find

⁶ February 25, 2014 Office Action.

personal growth by challenging themselves with the Outward Bound way.” The course is “designed to develop outdoor skills and to enhance your leadership and communication abilities.”

The ultimate focus of the semester is character development and effective leadership. As on all Outward Bound courses, the Southwest Leadership Semester uses wilderness adventure to develop leadership, self-confidence, compassion, service, fitness, and educational skills. Of this course in particular, you will focus on developing the confidence, knowledge, and integrity essential for effective leadership.

However, the “Southwest Leadership Semester” is a “Gap Year and Semester expedition” which lasts up to three months and, therefore, participants must be “highly motivated.”

We review the other third-party websites below:

A. December 29, 2014 Office Action⁷

1. The ICRA website (icra-edu.org) does not offer educational services, but provides links to information regarding “Personal Skills, Teamwork, Facilitation and Leadership.” The closest link this website provides to Applicant’s field of personal development is “Personality theories, types and tests.” The webpage provides the following information:

“knowledge [of personality theories] helps to develop self-awareness and also to help others to achieve greater self-awareness and development too”. Great page to start if you want know about personality types.

⁷ We do not consider the LMA website (leadershipmanagement.com.au) because it is an Australian website and there is no evidence that U.S. consumers would engage an Australian company for the educational services at issue in this appeal.

This website is a resource for management information including personal skills that are useful in improving management techniques.⁸ It does not offer links useful for someone looking for personal development of self-realization, talent utilization, and finding personal satisfaction in one's life. Thus, one searching for self-realization, talent utilization, and finding personal satisfaction in one's life is not likely to utilize this website.

2. The Synthesis Management Group website (getsynthesis.com) advertises its leadership and team development services for organizations.⁹ It offers a "Personal Development Workshop" directed toward improving one's management skills (e.g., "Self Leadership," "Individual Development Strategies [Communication Peer-to-Peer, Facilitation Skills for Individual Contributors, Effective Presentations, etc.]" "Strategies for Successful Results," and "Professional Transitions"). While in the abstract Synthesis Management Group is offering training toward personal satisfaction and life goals, it does so in the milieu of business leadership, not personal self-realization, talent utilization, and finding personal satisfaction in one's life.

3. The Skill Path website (skillpath.com) offers seminars in the field of "personal development/communication" for purposes of improving business skills. Its advertising tagline is "Professional business training since 1989."

⁸ The copyright notice reads as follows: © ICRA: International Centre for development oriented Research in Agriculture.

⁹ "Our Leadership Learning focus to create effective learning environments at any level in an organization through [various] practices."

4. The Center for Management & Organization Effectiveness (cmoe.com) advertises its leadership development and teamwork building expertise.

B. February 25, 2015 Office Action

1. An excerpt from the Franklin Covey store website (franklincovey.com) advertises materials for developing organization leadership skills, trust, communication, and other business skills.

2. The Alison “certified learning” website (alison.com) offers online courses in business leadership skills and “Achieving Personal Success.” The purpose of Achieving Personal Success is how to overcome inertia and keep a fresh perspective in all your endeavors.

To rely on the similarity of the services as a basis for refusing registration, the Trademark Examining Attorney must come forth with a persuasive evidentiary showing of relatedness of the services at issue. *In re St. Helena Hosp.*, 113 USPQ2d at 1086. The evidence does not support a finding that the services are related because, with the exception of the Outward Bound website and perhaps the Synthesis Management Group, none of the third-party websites submitted by the Trademark Examining Attorney show anything approaching Applicant’s educational services in the field of helping people achieve life goals, self-realization, talent utilization, and personal satisfaction. There is little, if any, basis on this evidentiary record to find that the relevant public would encounter both marks under circumstances likely to give rise to the mistaken belief that the services

emanate from the same source. In other words, the Examining Attorney has not established that the same consumers would encounter both marks.

C. The conditions under which and buyers to whom sales are made, that is, “impulse” vs. careful, sophisticated purchasing.

Although Applicant did not submit any evidence regarding the degree of purchaser care, the inherent nature of the educational services implies that there will be an elevated degree of purchaser care. For example, relevant purchasers will have a specific need for an education program for personal development, leadership, teamwork and customer service; educational services are not an ordinary purchase or acquisition and will require the purchaser’s focused attention; purchasers will compare the offerings from various providers in the relevant field to ensure that the selected service covers the appropriate subject matter; the educational services may be essential to the purchaser’s business or personal well-being; and the evidence of record indicates that the services will not be inexpensive. The Outward Bound services are over \$7,000, the Alison course offerings were part of a program for achieving a diploma or certification of completion,¹⁰ the Franklin Covey courses ranged from one hour to two days and from \$65 to \$1895, and CMOE courses ranged from one to multiple day formats or could be taken in modules over an extended period of time. In short, the educational services at issue are not impulse purchases.

¹⁰ The Alison course offerings are part of a larger program wherein the “students” work toward an Alison diploma or certificate wherein “you must study and complete all modules and score 80% or more in each of the course assessments.”

D. Balancing the factors.

Because the record does not prove that the services are related or will be encountered by the same consumers and because we find that the consumer will exercise an elevated degree of purchasing care, Applicant's mark INSPIRED GRIT for "education services, namely, providing live and on-line coaching, training, seminars, courses, retreats, camps, and workshops in the field of personal development as it relates to helping people identify, set, and achieve personal life goals; providing live and on-line coaching in the field of personal development, namely, life coaching services in the field of self-realization, talent utilization, and finding personal satisfaction in one's life" is not likely to cause confusion with the registered mark GRIT for "educational services, namely, developing and conducting seminars and workshops in the field of leadership, teamwork and customer service."

Decision: The refusal to register Applicant's mark INSPIRED GRIT is reversed.