

This Opinion is not a
Precedent of the TTAB

Mailed: March 24, 2017

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

*In re Century Stone Incorporated
trading as Century Quartz Stone*

Serial No. 86687997

Gene Bolmarcich, Law Offices of Gene Bolmarcich
for Century Stone Incorporated.

Gilbert M. Swift, Trademark Examining Attorney, Law Office 109,
Michael Kazazian, Managing Attorney.

Before Zervas, Gorowitz and Coggins,
Administrative Trademark Judges.

Opinion by Gorowitz, Administrative Trademark Judge:

Century Stone Incorporated, trading as Century Quartz Stone (“Applicant”) seeks registration on the Principal Register of the mark CENTURY QUARTZ STONE and CQ design, as set forth below



for, as amended:

Epoxy resin-based slabs manufactured using crushed
recycled rock and glass for building purposes, sold to

fabricators of building products; Quartz, sold to fabricators of building products, in International Class 19.¹

The description of the mark reads: “The mark consists of the white lettering ‘CQ’ in white and the black lettering, ‘CENTURY QUARTZ STONE’ on a shaded background in which a rectangular frame at left fades from black to gray then to white from left to right.” The colors black, white, and gray are claimed as a feature of the mark. Further, the term “QUARTZ STONE” has been disclaimed.

Registration was refused on the basis of 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 for “quartz surface slabs, countertops and tiles; building materials, namely, quartz material used in the manufacture of countertops, bathroom vanities, bar tops, and tub surrounds; quartz floor tiles,”² as to cause confusion, mistake, or to deceive.³

When the refusal was made final, Applicant appealed. We reverse the refusal to register Applicant’s mark.

¹ Application Serial No. 86687997 was filed on July 9, 2015, 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. 4885100, issued January 12, 2016.



³ Registration No. 3293571 for the mark for “ceramic tiles for flooring and colorings,” was also cited as a bar to registration; however, this citation was withdrawn by the Examining Attorney in his appeal brief. Thus, we need only decide the question of likelihood of confusion in connection with the cited CQ registration.

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).

We start with a consideration of the similarity of the marks



and

by comparing them “in their

entireties as to appearance, sound, connotation and commercial impression.” *Palm Bay Imports Inc.*, 73 USPQ2d at 1691 (*quoting du Pont*, 177 USPQ at 567). While “the similarity or dissimilarity of the marks is determined based on the marks in their entireties ... 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 a consideration of the marks in their entireties.” *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985).

In this case, Applicant’s mark is a composite mark consisting of a verbal portion and stylized letters on a shaded background consisting of a fading rectangle. When

evaluating a composite mark for goods containing both verbal elements and designs, the verbal portion of the mark is most likely to indicate the origin of the goods because it is the verbal portion of the mark that consumers would use to refer to or request the goods. *In re Viterra*, 671 F.3d 1358, 101 USPQ2d 1905, 1908, 1911 (Fed. Cir. 2012).


Since the similarity asserted by the Examining Attorney is in the use of the letters, “C” and “Q” in both marks, we start by looking at these elements. The design element in Applicant’s mark consists of the fading rectangle and stylized versions of the first letter of the first two words in the mark (Century and Quartz), and is subordinate to the literal portion of the mark. What purchasers will likely recall and refer to the goods by is CENTURY QUARTZ,⁴ rather than CQ. In fact, without the literal portion of the mark, the lower case letter “q” could be mistaken for either a lower case letter “a” or “g.”

In advocating in favor of the refusal, the Examining Attorney argues that “the marks are similar, because they share the textually identical distinctive term ‘CQ’ and the disclaimed portions of Applicant’s mark are less significant.” Examining Attorney’s Brief, 6 TTABVUE 12. This argument discounts the word “CENTURY” in Applicant’s mark, which is not disclaimed. Moreover, there is no evidence that the word “CENTURY” is inherently or commercially weak when used in connection with


⁴ Consumers are not likely to recall and refer to the registrant’s goods as “Century Quartz,” since the registrant’s name is “Colorquartz, Inc.”

quartz products. Thus, the word “CENTURY” is a dominant element in Applicant’s mark.

The cited mark is a design consisting of a square with stylized upper case letters

“C” and “Q” within it, .

We dealt with an analogous issue in *In re TSI Brands Inc.*, 67 USPQ2d 1657 (TTAB 2002) wherein an application for the mark AK AMERICAN KHAKIS, in the

following format: , for sportswear was rejected on the basis of two registrations, owned by the same party, for marks consisting of the letters AK in

the following formats:  and  for athletic

clothing. In that case, the Board concluded that “the Examining Attorney erred in his dominant focus on the letters ‘AK’ in the respective marks to the substantial exclusion of the other, significantly different elements therein. We consequently believe that applicant’s ‘AK AMERICAN KHAKIS’ and design mark for ‘sportswear[,] namely men’s and women’s pants, jeans, shorts and shirts,’ is not so similar to either of registrant’s ‘AK’ and design marks for various items of athletic clothing that the contemporaneous use of the respective marks in connection with such closely related articles of apparel is likely to cause confusion.” *TSI Brands* at 1663-4.

As in *TSI Brands*, we find that the Examining Attorney in this case erred in focusing on the letters “CQ” in the respective marks to the substantial exclusion of the other, significantly different elements therein, i.e., the literal portion of Applicant’s mark, the stylization of the letters “CQ,” and the design elements. Further, the marks in their entirety are not so similar in sound, appearance, connotation or commercial impression that, merely because such marks share the letters “CQ,” confusion as to origin or association is likely. *Id.* at 1663.

Having found that the marks are not similar, it is not necessary for us to discuss the other *du Pont* factors. “[A] single *du Pont* factor may be dispositive in a likelihood of confusion analysis, especially when that single factor is the dissimilarity of the marks.” *Oakville Hills Cellar, Inc. v. Georgallis Holdings, LLC*, 826 F.3d 1376, 119 USPQ2d 1286, 1290 (Fed. Cir. 2016), quoting *Odom’s Tenn. Pride Sausage, Inc. v. FF Acquisition, L.L.C.*, 600 F.3d 1343, 93 USPQ2d 2030, 2032, (Fed. Cir. 2010) (citation and internal quotation marks omitted); see also *Kellogg Co. v. Pack’em Enters., Inc.*, 951 F.2d 330, 21 USPQ2d 1142, 1145 (Fed. Cir. 1991) (“We know of no reason why, in a particular case, a single *DuPont* factor may not be dispositive.”). In this case, we find the dissimilarity in the marks to be dispositive and accordingly find that there is no likelihood of confusion.

Decision: The refusal to register Applicant’s mark



for “epoxy resin-based slabs manufactured using

crushed recycled rock and glass for building purposes, sold to fabricators of building products; quartz, sold to fabricators of building products” is reversed.