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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re A Mother's Touch Movers, LLC

Serial No. 87365368

Mark F. Warzecha and Daniel C. Pierron of Widerman Malek PL,
for A Mother's Touch Movers, LLC.

Brian Pino, Trademark Examining Attorney, Law Office 114,
Laurie Kaufman, Managing Attorney.

Before Taylor, Ritchie, and Pologeorgis,
Administrative Trademark Judges.

Opinion by Pologeorgis, Administrative Trademark Judge:

A Mother's Touch Movers, LLC ("Applicant") seeks registration on the Principal Register of the mark A MOTHER'S TOUCH MOVERS (in standard characters; MOVERS disclaimed) for "Transportation of household goods of others" in International Class 39.[1]

[1] Application Serial No. 87365368, filed on March 9, 2017, based on an allegation of use in commerce under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), claiming June 8, 1993 as both the date of first use and the date of first use in commerce.

The Trademark Examining Attorney refused registration of Applicant's mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground of likelihood of confusion with the registered mark A WOMAN'S TOUCH MOVING (in standard characters; MOVING disclaimed) for "Moving and storage of goods; Moving company services" in International Class 39.[2]

When the refusal was made final, Applicant appealed and requested reconsideration. After the Examining Attorney denied the request for reconsideration, the appeal resumed. The appeal is fully briefed. We affirm the refusal to register.[3]

I. 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 Co.,* 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). We have considered each *du Pont* factor that is relevant and all evidence and arguments of record. *See M2 Software, Inc. v. M2 Commc'ns, Inc.,* 450 F.3d 1378, 78 USPQ2d 1944, 1947 (Fed. Cir. 2006); *ProMark Brands Inc. v. GFA Brands, Inc.,* 114 USPQ2d 1232, 1242 (TTAB 2015) ("While we have considered each factor for which we have evidence, we focus our analysis on those factors we find to

[2] Registration No. 5067448, registered on October 25, 2016.

[3] The TTABVUE and Trademark Status and Document Retrieval ("TSDR") citations refer to the docket and electronic file database for the involved application. All citations to the TSDR database are to the downloadable .PDF version of the documents.

be relevant."). In any likelihood of confusion analysis, however, two key considerations are the similarities between the marks and the similarities between the goods or 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 [or services] and differences in the marks.").

A. Similarity of the Services

We initially consider the similarity of the services at issue, the second *du Pont* factor. In making our determination regarding the relatedness of the services, we must look to the services as identified in Applicant's 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. Hous. Comps. Servs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990) ("The authority is legion that the question of registrability of an applicant's mark must be decided on the basis of the identification of goods [or services] set forth in the application regardless of what the record may reveal as to the particular nature of an applicant's goods [or services], the particular channels of trade or the class of purchasers to which the sales of goods [or services] are directed.")); *see also In re Giovanni Food Co.*, 97 USPQ2d 1990, 1991 (TTAB 2011).

Applicant's services are identified as "Transportation of household goods of others." The Registrant's identified services include "moving of goods" and "moving company services."

We take judicial notice of the dictionary definition of the term "transport" which is defined as to "take or carry (people or goods) from one place to another by means of a vehicle, aircraft, or ship."[4] It is common knowledge that "moving company services" provide the transport of one's belongings from one place to another. In view thereof, the parties' services are in-part legally identical in that both provide moving services on behalf of others. Indeed, Applicant concedes that it provides the identical "moving services" under its applied-for mark as Registrant provides under its registered mark.[5]

Thus, the second *du Pont* factor strongly favors a finding of likelihood of confusion.

B. Similarities in Trade Channels and Classes of Purchasers

Next we consider established, likely-to-continue channels of trade, the third *du Pont* factor. Because the identifications of Applicant's services and Registrant's services are legally identical in part and have no meaningful restrictions as to channels of trade or classes of customers, it is presumed that the trade channels and classes of purchasers are the same for these legally identical in part services. *See In re Viterra Inc.*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (legally identical goods [or services] are presumed to travel in same channels of trade to same class of purchasers); *In re Yawata Iron & Steel Co.*, 403 F.2d 752, 159 USPQ 721, 723

[4] www.oxforddictionaries.com. The Board may take judicial notice of dictionary definitions, including online dictionaries that exist in printed format. *In re Cordua Rests. LP*, 110 USPQ2d 1227, 1229 n.4 (TTAB 2014), *aff'd,* 823 F.3d 594, 118 USPQ2d 1632 (Fed. Cir. 2016); *Threshold.TV Inc. v. Metronome Enters. Inc.*, 96 USPQ2d 1031, 1038 n.14 (TTAB 2010).

[5] December 8, 2018 Response to Office Action; TSDR p. 5.

(CCPA 1968) (where there are legally identical goods [or services], the channels of trade and classes of purchasers are considered to be the same); *In re Am. Cruise Lines, Inc.*, 128 USPQ2d 1157, 1158 (TTAB 2018).

The third *du Pont* factor, therefore, also weighs in favor of finding a likelihood of confusion.

C. Similarity of the Marks

We finally consider 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. *du Pont,* 177 USPQ at 567. Similarity in any one of these elements may be sufficient to find the marks similar. *In re Thor Tech Inc.*, 90 USPQ2d 1634, 1635 (TTAB 2009); *In re 1st USA Realty Prof'ls, Inc.*, 84 USPQ2d at 1586; *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988).

"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 [owners]." *Coach Servs. Inc. v. Triumph Learning LLC*, 668 F3d 1356, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012) (internal quotation marks omitted). The proper focus is on the recollection of the average customer, who retains a general rather than specific impression of the marks. *Geigy Chem. Corp. v. Atlas Chem. Indus., Inc.*, 438 F.2d 1005, 169 USPQ 39, 40 (CCPA 1971); *L'Oreal S.A. v. Marcon*, 102 USPQ2d 1434, 1438 (TTAB 2012); *Winnebago Indus., Inc. v. Oliver & Winston, Inc.,* 207 USPQ 335, 344 (TTAB 1980); *Sealed Air Corp. v. Scott Paper Co.,* 190 USPQ

106, 108 (TTAB 1975). Here the average consumer includes members of the general public seeking moving services.

Applicant's mark is A MOTHER'S TOUCH MOVERS. The cited mark is A WOMAN'S TOUCH MOVING.

The marks, considered as a whole, are similar in sight and sound, with both consisting of four words, beginning with the article "A" and ending with the nearly identical "TOUCH MOVERS" or "TOUCH MOVING." Applicant's mark contains the word "MOTHER'S" while the mark in the cited registration contains the word "WOMAN'S." These two words are interlinked, since the term "mother" is defined as "a female parent,"[6] and the term "woman" is defined as "an adult female person."[7] Accordingly, the marks "A MOTHER'S TOUCH MOVERS" and "A WOMAN'S TOUCH MOVING" look and sound alike, and they create a similar overall commercial impression of a female adding her "touch" to the moving process.

Applicant argues, however, that the Office has previously allowed two registrations owned by different third-party registrants to coexist on the register that contain the phrases "MOTHER'S TOUCH" and "WOMAN'S TOUCH."[8] Specifically, Applicant submitted copies of the registration for the mark DENTISTRY WITH A WOMAN'S TOUCH" for "dentistry services" and the registration for the mark CHILDREN'S DENISTRY WITH A MOTHER'S TOUCH for "pediatric dental

[6] www.merriam-webster.com.

[7] *Id*.

[8] Applicant's Request for Reconsideration; TSDR pp. 6-7.

services."[9] Applicant contends that since the Office has allowed these two registrations to coexist on the register, the Office has purportedly found that the phrases "a woman's touch" and "a mother's touch" used on similar services are sufficiently dissimilar in connotation and overall commercial impression so as to make confusion not likely.[10]

Prior decisions and actions of other trademark examining attorneys in registering other marks, however, have little evidentiary value and are not binding upon the USPTO or the Board. Trademark Manual of Examining Procedure ("TMEP") §1207.01(d)(vi) (Oct 2018); *see In re USA Warriors Ice Hockey Program, Inc.*, 122 USPQ2d 1790, 1793 n.10 (TTAB 2017). Each case is decided on its own facts, and each mark stands on its own merits. *In re USA Warriors Ice Hockey Program, Inc.*, 122 USPQ2d at 1793 n.10 (quoting *In re Boulevard Entm't*, 334 F.3d 1336, 1343, 67 USPQ2d 1475, 1480 (Fed. Cir. 2003)). Applicant's argument also fails to consider that third-party registrations are entitled to little weight on the issue of confusing similarity because the registrations are "not evidence that the registered marks are actually in use or that the public is familiar with them." *In re Midwest Gaming & Entm't LLC*, 106 USPQ2d 1163, 1167 n.5 (TTAB 2013) (citing *In re Mighty Leaf Tea*, 601 F.3d 1342, 1346, 94 USPQ2d 1257, 1259 (Fed. Cir. 2010)); *see* TMEP §1207.01(d)(iii). Moreover, the existence on the register of other seemingly similar marks does not provide a basis for registrability for the applied-for mark. *See AMF*

[9] *Id.*; TSDR pp. 17-18.

[10] *Id.*; TSDR pp. 6-7.

Inc. v. Am. Leisure Prods., Inc., 474 F.2d 1403, 1406, 177 USPQ 268, 269 (C.C.P.A. 1973); *In re Total Quality Grp., Inc.*, 51 USPQ2d 1474, 1477 (TTAB 1999), This is particularly true since we do not know the history of these two third-party registrations or the commercial relationships between the two third-party registrants or whether these third-party registrants have consented to the coexistence of their respective registrations.

Notwithstanding the foregoing, consumer confusion has been held likely for marks that do not necessarily sound or look alike but convey the same idea, stimulate the same mental reaction, or may have the same overall meaning, as is the case here. *See, e.g.*, *Proctor & Gamble Co. v. Conway*, 419 F.2d 1332, 1336, 164 USPQ 301, 304 (C.C.P.A. 1970) (holding MISTER STAIN likely to be confused with MR. CLEAN on competing cleaning products); *In re M. Serman & Co.*, 223 USPQ 52, 53 (TTAB 1984) (holding CITY WOMAN for ladies' blouses likely to be confused with CITY GIRL for a variety of female clothing); *H. Sichel Sohne, GmbH v. John Gross & Co.*, 204 USPQ 257, 260-61 (TTAB 1979) (holding BLUE NUN for wines likely to be confused with BLUE CHAPEL for the same goods); *Ralston Purina Co. v. Old Ranchers Canning Co.*, 199 USPQ 125, 128 (TTAB 1978) (holding TUNA O' THE FARM for canned chicken likely to be confused with CHICKEN OF THE SEA for canned tuna); *Downtowner Corp. v. Uptowner Inns, Inc.*, 178 USPQ 105, 109 (TTAB 1973) (holding UPTOWNER for motor inn and restaurant services likely to be confused with DOWNTOWNER for the same services); TMEP §1207.01(b).

We recognize that in comparing the marks, we must consider Applicant's and Registrant's marks in their entireties. Thus, we have taken into account all of the differences between them, including the terms MOTHER'S and MOVERS in Applicant's mark and WOMAN'S and MOVING in Registrant's mark. We nonetheless find that despite these differences, the marks, when viewed in their entireties, are similar in appearance, pronunciation, and connotation and engender similar overall commercial impressions. This especially holds true when the services are legally identical in part, as is the case here. *See Coach Servs. Inc.*, 101 USPQ2d at 1722 ("When trademarks would appear on substantially identical goods [or services], 'the degree of similarity necessary to support a conclusion of likely confusion declines.'") (internal citations omitted).

Accordingly, the first *du Pont* factor also favors a finding of likelihood of confusion.

D. Conclusion

We have considered all of the arguments and evidence of record, including those not specifically discussed herein, and all relevant *du Pont* factors. Because we have found that the marks at issue are similar; that Applicant's identified services are legally identical in part to Registrant's services; that the legally identical in part services are presumed to move in identical trade channels and that they would be offered to the same classes of purchasers, we conclude that Applicant's A MOTHER'S TOUCH MOVERS mark, as used in connection with the services identified in its involved application, so resembles the cited mark A WOMAN'S TOUCH MOVING for

"moving and storage of goods; [and] moving company services" as to be likely to cause confusion or mistake, or to deceive under Section 2(d) of the Trademark Act.

Decision: The refusal to register Applicant's mark under Section 2(d) of the Trademark Act is affirmed.