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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Hearst Communications, Inc.¹

v.

Charles Browning Wilson

Opposition No. 91120453
to application Serial No. 75810043
filed on October 18, 1999

Theodore H. Davis Jr., Olivia Maria Baratta and Lauren T. Estrin of Kilpatrick Stockton for Hearst Communications, Inc.

Robert M. Steckman for Charles Browning Wilson.

Before Seeherman, Quinn and Walters, Administrative Trademark Judges.

Opinion by Quinn, Administrative Trademark Judge:

Charles Browning Wilson filed an intent-to-use application to register the mark COSMO.COM for "providing on-line information on available entertainment in various

¹ The original notice of opposition was filed in the names of Hearst Communications, Inc. and Hearst Magazines Property, Inc. The pleaded marks were assigned to Hearst Communications, Inc., and the assignment is recorded in the Assignment Branch records of the Office at reel 3034, frame 0151. Accordingly, the caption of this proceeding has been changed to show Hearst Communications, Inc. as the sole opposer.

cities" (in International Class 41).

Hearst Communications, Inc. opposed registration (over eight years ago, on September 26, 2000) under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground of likelihood of confusion; and under Section 43(c)(1) of the Trademark Act, 15 U.S.C. §1125(c)(1), on the ground of dilution. Opposer based its notice of opposition on its ownership of a family of COSMOPOLITAN and COSMO marks for a variety of goods and services, including publications and providing an interactive on-line computer database featuring, inter alia, entertainment news.

Applicant, in his answer, denied the salient allegations in the notice of opposition.

The Record

The record consists of the pleadings; and the file of the involved application. Pursuant to the parties' stipulation approved by the Board, the parties submitted trial testimony through declaration testimony and responses to written cross-examination; the declarations are accompanied by numerous exhibits. Both parties filed briefs.

Applicant's Defense

At the outset, we direct our attention to applicant's defense that opposer's opposition is "barred by the statute of limitations." Applicant asserts that he has been using

the "cosmo.com" domain name since January, 1998, and that opposer has failed to take any action against applicant's use. Thus, according to applicant, the present action is barred by laches and acquiescence.

Opposer correctly responds with its contention that inasmuch as the present proceeding involves the right to register applicant's mark, opposer's inaction against applicant's use of his mark/domain name is irrelevant. See *National Cable Television Association v. American Cinema Editors Inc.*, 937 F.2d 1572, 19 USPQ2d 1424 (Fed. Cir. 1991). In the context of an opposition proceeding, laches does not begin to run until the mark is published for opposition. That is to say, laches in an inter partes proceeding begins to run from the time action could be taken against the registration of the mark at issue, regardless of when use of the mark began.

Here, opposer promptly filed a notice of opposition upon publication of applicant's mark. Further, applicant has not submitted any evidence showing that opposer agreed to or acquiesced in applicant's obtaining a registration. Thus, the affirmative defenses fail. *Warner-Lambert Co. v. Sports Solutions Inc.*, 39 USPQ2d 1686, 1691 (TTAB 1996).

The Parties

Opposer, its predecessors and its licensees have continuously used in the United States the mark COSMOPOLITAN

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in the magazine publishing industry for over 120 years, dating back to 1886. Since 1991, opposer has published over 500 million magazines under the marks COSMOPOLITAN and COSMO GIRL! As of 2006, COSMOPOLITAN magazine was published in over 25 languages and is sold in more than forty countries, making it the largest monthly magazine franchise in the world. In 1998, COSMOPLITAN magazine enjoyed a monthly average circulation in the United States of 2.6 million, while in 2000, COSMO GIRL! had a monthly average circulation in the United States of approximately 600,000.² Opposer's magazines sold under the marks COSMOPOLITAN and COSMO GIRL! include topics targeted to young women and girls, including shopping, health and beauty care, career advice, dating advice, personal growth and entertainment news. More specifically, COSMOPOLITAN is directed to females aged 18-34, while COSMO GIRL! is directed to females aged 12-17. Opposer spends in excess of \$16 million annually to promote

² Opposer, in its reply brief, states that there has been a change in the facts relating to its use of the mark COSMO GIRL! since the close of trial and the filing of opposer's main brief. More specifically, opposer indicates that it was suspending publication of its COSMO GIRL! magazine beginning on December 1, 2008. Opposer further states that no decision has been made regarding future use of the mark for magazines, but that all other uses of COSMO GIRL, including in connection with the publication of online content under the mark, continue. Opposer concludes by stating, "[n]evertheless, [opposer] invites the Board to resolve this matter without any reliance on the use-based rights to the COSMO GIRL mark for printed publications established by [opposer's] evidentiary submissions." (Reply Brief, p. 1). We accept opposer's invitation, and while we refer to the registered mark COSMO GIRL!, no additional consideration will be given thereto in our likelihood of confusion analysis.

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its goods and services under its marks, and the advertising includes use of print media and the Internet. Abbreviation of the mark COSMOPOLITAN to "Cosmo" began well prior to applicant's adoption of his mark. Through the years opposer and its magazine, both by virtue of opposer's use and third-party references, have become known by the abbreviated term "Cosmo." Although not registered as trademarks, opposer owns many domain names including COSMOTEENS.COM, COSMOLATINO.COM, COSMOMAG.COM and COSMOGIRL.COM.

Applicant is a professional lighting technician for rock and roll concert tours. Mr. Wilson has worked with some of the best known bands in music, including The Rolling Stones, AC/DC, Black Sabbath and Genesis. Since the mid-1980s, Mr. Wilson has been known in the concert touring industry as "Cosmo." Applicant purchased the domain name "cosmo.com" in 1998, using the website address as a portal "to discuss my travels, tours and to provide information about entertainment and recreational options in the many cities I have visited in the course of my career." (Wilson test., ¶11). Applicant states that his site receives about 10,000 hits per day. Applicant has invested approximately \$200,000 in developing, promoting and maintaining his website.

Standing

Opposer has established its standing to oppose registration of the involved application. In particular, opposer has properly made its pleaded registrations of record (see infra) and, further, has shown that it is not a mere intermeddler. Opposer's use and registrations of its marks establish that opposer has standing. See *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842 (Fed. Cir. 2000); *Ritchie v. Simpson*, 170 F.3d 1092, 50 USPQ2d 1023 (Fed. Cir. 1999); and *Lipton Industries, Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185 (CCPA 1982).

Opposer has introduced status and title copies of thirty-one of its registrations.³ The registered marks include COSMOPOLITAN for "magazine or periodical published monthly or at other intervals";⁴ COSMOPOLITAN.COM for "computer services, namely providing an interactive on-line computer database featuring portions of various magazines and articles and illustrative materials in the fields of personal relationships, beauty and fashion, health and fitness, personal hygiene, stars and entertainment news, and life and work, rendered by means of a global computer

³ With respect to certain of the registrations, we have taken judicial notice of the updated status of them. See *Time Warner Entertainment Co. v. Jones*, 65 USPQ2d 1650 (TTAB 2002); and TBMP §704.03(b)(1)(A).

⁴ Registration No. 630028, issued July 3, 1956; renewed.

network";⁵ COSMO GIRL ("GIRL" disclaimed) for "general interest magazine for girls and young women";⁶ and COSMO GIRL! for "providing an interactive on-line computer database featuring portions of various magazines and articles and illustrative materials in the fields of personal relationships, beauty and fashion, health and fitness, personal hygiene, stars and entertainment news and life and work, rendered by means of a global computer network."⁷ Opposer also has registered its COSMOPOLITAN mark for a variety of goods, including books, pre-recorded video tapes and video cassettes, pre-recorded compact discs and audio cassettes, hair ornaments and eye glasses.⁸

Priority

In view of opposer's ownership of valid and subsisting registrations, there is no issue regarding opposer's priority. *King Candy, Inc. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108 (CCPA 1974). Thus, the only

⁵ Registration No. 2518660, issued December 11, 2001; Section 8 affidavit accepted, Section 15 affidavit acknowledged.

⁶ Registration No. 2527954, issued January 8, 2002; Section 8 affidavit accepted, Section 15 affidavit acknowledged.

⁷ Registration No. 2407134, issued November 21, 2000; Section 8 affidavit accepted, Section 15 affidavit acknowledged.

⁸ Applicant, in his brief (p. 10, fn 5), "recognizes that opposer registered 'Cosmo' for 'Magazines featuring information on women's services, beauty, health, and human relationships' in International Class 16 under registration 3372644 in January, 2008." Although opposer did not make this registration of record, we deem applicant to have stipulated the registration into the record. Nevertheless, inasmuch as opposer did not refer to the registration in either of its briefs, we have not relied on it in rendering our decision.

issue to decide herein is likelihood of confusion.

Likelihood of Confusion

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 issue. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). Opposer must establish that there is a likelihood of confusion by a preponderance of the evidence. The relevant *du Pont* factors in the proceeding now before us are discussed below.

Fame

Inasmuch as opposer introduced evidence bearing on the fame of its marks, we now turn to consider this *du Pont* factor. Fame of the prior mark plays a dominant role in likelihood of confusion cases featuring a famous mark. *Bose Corp. v. QSC Audio Products Inc.*, 293 F.3d 1367, 63 USPQ2d 1303 (Fed. Cir. 2002); *Recot Inc. v. M.C. Becton*, 214 F.3d 1322, 54 USPQ2d 1894 (Fed. Cir. 2000); and *Kenner Parker Toys, Inc. v. Rose Art Industries, Inc.*, 963 F.2d 350, 22 USPQ2d 1453 (Fed. Cir. 1992). Fame for likelihood of confusion purposes arises "as long as a significant portion of the relevant consuming public...recognizes the mark as a source indicator." *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1694 (Fed. Cir. 2005). Given the nature of opposer's

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goods and services, the relevant consuming public herein comprises the general public.

The record establishes that opposer's COSMOPOLITAN mark has been extensively used in connection with magazines for over 100 years, and that opposer also has used this mark and other COSMOPOLITAN marks on a variety of goods and services. Opposer's most recent figures show that in 1998 COSMOPOLITAN magazine had a monthly average circulation in excess of 2.6 million copies in this country. Opposer's advertising expenditures in 2005 exceeded \$16.2 million.

Unsolicited references to opposer's COSMOPOLITAN mark and its magazine sold under the mark routinely have been made by others in a variety of contexts.

Although applicant referred to the existence of third-party registrations and uses of COSMOPOLITAN and COSMO marks, the record is devoid of any evidence to establish this fact.

Based on the record before us, we find that the mark COSMOPOLITAN is famous for magazines. This factor weighs heavily in opposer's favor. Although the mark may enjoy some renown in connection with other goods and services, we are not prepared to say, at least on the present record, that the mark is famous for opposer's other goods and services.

Family of Marks

Opposer contends that it owns a family of COSMOPOLITAN and COSMO marks. With respect to this claim, we look to our primary reviewing court for guidance:

A family of marks is a group of marks having a recognizable common characteristic, wherein the marks are composed and used in such a way that the public associates not only the individual marks, but the common characteristic of the family, with the trademark owner. Simply using a series of similar marks does not of itself establish the existence of a family. There must be recognition among the purchasing public that the common characteristic is indicative of a common origin of the goods. Recognition of the family is achieved when the pattern of usage of the common element is sufficient to be indicative of the origin of the family.

J & J Snack Foods Corp. v. McDonald's Corp., 932 F.2d 1460, 18 USPQ2d 1889, 1891 (Fed. Cir. 1991). In the past, the Board has looked at whether the marks asserted to comprise a "family" have been used and advertised in promotional material or used in everyday sales activities in such a manner as to create common exposure and, thereafter, recognition of common ownership based upon a feature common to each mark. *American Standard, Inc. v. Scott & Fetzer Co.*, 200 USPQ 457, 461 (TTAB 1978).

We have no qualms with opposer's assertion that the number of its COSMOPOLITAN and COSMO marks in use is more than sufficient to comprise a family. This fact, however,

is not the end of the story. That is, the mere fact of adoption, use and/or registration of several marks incorporating COSMOPOLITAN or COSMO, as in the case here with opposer, does not in itself prove that a family of marks exists. *Polaroid Corp. v. Richard Mfg. Co.*, 341 F.2d 150, 144 USPQ 419 (CCPA 1965); *Trek Bicycle Corp. v. Fier*, 56 USPQ2d 1527, (TTAB 2000); and *Consolidated Foods Corp. v. Sherwood Medical Industries, Inc.*, 177 USPQ 279 (TTAB 1973). Although the record reveals some conjoint use of various combinations of opposer's marks, the evidence falls short of showing that a family of marks has been promoted together.

Accordingly, we find, based on the record before us, that opposer has not established a family of COSMOPOLITAN or COSMO marks.

The Marks

Notwithstanding that opposer has relied on many marks comprising COSMOPOLITAN or COSMO, in whole or in part, opposer chose to highlight its COSMOPOLITAN.COM mark for on-line computer services when discussing the similarity between the marks. (Brief, p. 28). Opposer apparently views this mark as being the closest to applicant's mark and, therefore, providing the strongest case for likelihood of confusion. Not surprisingly, opposer also places significant emphasis on its famous COSMOPOLITAN mark for magazines. We agree that these two marks present opposer's

strongest case, and likewise we will focus our analysis on these two marks.

With respect to the involved marks, we examine the similarities and dissimilarities of the marks in their appearance, sound, meaning, and commercial impression. *Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 73 USPQ2d at 1692. The test is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in their entireties that confusion as to the source of the services offered under the respective marks is likely to result. The focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975). Further, as the fame of a mark increases, as in the case of opposer's mark COSMOPOLITAN for magazines, the degree of similarity between the marks necessary to support a conclusion of likely confusion declines. *Bose Corp. v. QSC Audio Products Inc.*, 63 USPQ2d at 1309.

We find that opposer's COSMOPOLITAN and COSMOPOLITAN.COM marks are similar to applicant's mark COSMO.COM. It is virtually the same as opposer's COSMOPOLITAN mark, differing only in that COSMO is the shortened form of COSMOPOLITAN and, as discussed below, is

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recognized as an alternate form of COSMOPOLITAN. As for opposer's COSMOPOLITAN mark, the ".COM" portion of applicant's mark, referring to a top level domain term, has no source-identifying significance. See *In re Reed Elsevier Properties Inc.*, 77 USPQ2d 1649 (TTAB 2005), *aff'd*, 482 F.3d 1376, 82 USPQ2d 1378 (Fed. Cir. 2007). It is well 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."] Given the lack of source-indicating significance of ".COM," there is nothing improper, in comparing applicant's mark to opposer's mark COSMOPOLITAN, to give less weight to the ".COM" portion. Comparing each of opposer's marks to applicant's mark, the marks are similar in sound and appearance. Further, the marks convey the same meaning and engender virtually identical overall commercial impressions.

Opposer often uses COSMO in connection with its goods and services. Opposer's COSMOPOLITAN magazine has included

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features captioned as Cosmo Quiz, Cosmo Surveys, Cosmo FAQs, Connect With Cosmo, Cosmo Exclusives and Everything Cosmo, among several others. The record also is replete with examples of third parties referring to opposer and its mark as "Cosmo." Representative examples include the following:

COSMO'S MOMENT: Cosmopolitan magazine is featured prominently in the new movie, "Legally Blonde," starring Reese Witherspoon. She plays a gorgeous blonde law student and avid Cosmo reader, who initially is not taken seriously.

(Women's Wear Daily, July 20, 2001)

Cosmopolitan and Glamour, the two mags that dominate the so-called Glazmo niche...both mags' April issues are flanked by Hollywood's A-list...Renee Zellweger is caught somewhere between a smirk and a smile on Cosmo.

(Daily Variety, March 31, 2003)

Cosmo is still pulling in readers. Cosmopolitan reported a 9.5 percent gain in paid circulation to 3 million copies, continuing a growth spurt seen in early 2002.

(Newsday, February 20, 2003)

Ms. [Kate] White [editor in charge of the American version of Cosmopolitan] paused so that the women, all of whom edit international versions of Cosmo, could absorb the deep implications of the trend...

(New York Times, May 26, 2002)

Cosmo's editor moves to Glamour, heating up the competition between two ad-rich magazines.

(New York Times, August 11, 1998)

There is no question but that "Cosmo" is commonly used by opposer and others as an abbreviated name for opposer's

COSMOPOLITAN magazine. The consuming public recognizes this, the result being that "Cosmo" is viewed as essentially an alter ego of opposer and its magazine. Simply put, when consumers encounter applicant's mark COSMO.COM they will perceive this mark as similar to opposer's marks COSMOPOLITAN and COSMOPOLITAN.COM.

The similarity between the marks weighs in opposer's favor.

The Goods and Services

It is well established that the goods and/or services of the parties need not be similar or competitive, or even offered through the same channels of trade, to support a holding of likelihood of confusion. It is sufficient that the respective goods and/or services of the parties are related in some manner, and/or that the conditions and activities surrounding the marketing of the goods and/or 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 originate from the same source. See *Hilson Research, Inc. v. Society for Human Resource Management*, 27 USPQ2d 1423 (TTAB 1993); and *In re International Telephone & Telegraph Corp.*, 197 USPQ 910, 911 (TTAB 1978). The issue, of course, is not whether purchasers would confuse the goods and/or services, but rather whether there is a likelihood of

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confusion as to the source of the goods and/or services. *In re Rexel Inc.*, 223 USPQ 830 (TTAB 1984). The question of likelihood of confusion must be determined based on an analysis of the goods and/or services recited in applicant's application vis-à-vis the goods and/or services identified in opposer's pleaded registration(s). *Canadian Imperial Bank v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1783 (Fed. Cir. 1992).

With respect to the parties' services, opposer's "computer services, namely providing an interactive on-line computer database featuring portions of various magazines and articles and illustrative materials in the fields of personal relationships, beauty and fashion, health and fitness, personal hygiene, stars and entertainment news, and life and work, rendered by means of a global computer network" are legally identical to or, at the very least, are closely related to applicant's "providing on-line information on available entertainment in various cities."

When comparing applicant's services to opposer's "magazine or periodical published monthly or at other intervals," we find that they are closely related. As is obvious, opposer itself offers both magazines and online computer services under essentially the same mark, showing that both types of goods and services can emanate from a single entity. Further, it is common knowledge that

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magazine publishers routinely operate websites to provide an electronic or enhanced version of their printed magazines. Opposer is no exception, and it is beyond dispute that the general public is aware of this industry practice, and has come to expect such circumstances. Ordinary consumers of opposer's magazine are likely to expect that opposer would offer an online version of its COSMOPOLITAN magazine and/or otherwise provide related content on the Internet. The record demonstrates that opposer's magazine content covers a wide range of topics, including entertainment news and information, similar to the type of entertainment information provided by applicant. *See The Conde Nast Publications Inc. v. Vogue Travel, Inc.*, 205 USPQ 579 (TTAB 1979) [VOGUE for magazine likely to cause confusion with VOGUE and design for travel agency services]. Simply put, opposer's online services rendered under the mark COSMOPOLITAN.COM that are concomitant with its publication of a magazine under the famous mark COSMOPOLITAN would lead consumers to mistakenly believe that applicant's online services offered under the mark COSMO.COM originate with opposer. *See Penthouse International, Ltd. v. Dyn Electronics, Inc.*, 196 USPQ 251 (TTAB 1977), *aff'd unpublished opinion*, (CCPA, Appeal No. 77-615, Jan. 26, 1978); *American Heritage Publishing Co., Inc. v. Camillus Cutlery Co.*, 154 USPQ 451 (TTAB 1967); *HMH Publishing Co.*,

Inc. v. Breglia, 141 USPQ 36 (TTAB 1964); and *Johnson Publishing Company, Inc. v. McLendon*, 133 USPQ 486 (TTAB 1962).

The legal identity between the parties' services and the close relationship between opposer's magazine and applicant's online services is a factor that weighs in opposer's favor.

Trade Channels, Purchasers and Conditions of Sale

As indicated above, opposer's and applicant's on-line computer services are legally identical. Thus, we must presume that they are rendered in identical trade channels and are purchased by the same consumers. The purchasers comprise the general public, and these ordinary consumers would use nothing more than ordinary care in making their purchasing decisions.

Opposer's magazine and applicant's on-line computer services may travel in different trade channels although, as the record establishes, portions of opposer's COSMOPOLITAN magazine appear on opposer's COSMOPOLITAN.COM website. The parties' goods and services end up in the hands of the same consumers. Again, the class of purchaser is identical, namely ordinary consumers who would exercise only ordinary care when purchasing magazines and on-line computer services.

The similarity in trade channels and classes of purchasers weighs in favor of a finding of likelihood of confusion.

Actual Confusion

Opposer contends that actual confusion is "rampant" and "pervasive in the marketplace." In support of this contention, opposer submitted evidence of many misdirected emails produced by applicant in response to discovery requests. In its brief opposer reproduces the texts of forty-eight emails received by applicant. (Brief, pp. 10-17). It is clear that in each instance the email sent to applicant was intended for opposer. The emails concern subscription matters regarding opposer's magazine, as well as comments/responses from readers about certain articles appearing in opposer's magazine.

Applicant dismisses this evidence by indicating that he received the emails in the initial year of his ownership of the domain name "cosmo.com," and counsel asserts that such emails are no longer received, except on rare occasions. Applicant further contends that mere carelessness or inattentiveness is not actual confusion. Applicant also argues that the evidence constitutes inadmissible hearsay and should be excluded.

The record clearly establishes that consumers of opposer's magazine have contacted applicant at his cosmo.com

website under the mistaken impression that they were contacting opposer. Applicant himself states that “[i]t is safe to assume that these individuals simply guessed (back in 1999) that the cosmo.com domain was the property of Opposer.” (Brief, p. 14). This is exactly the point. Given the fame of the COSMOPOLITAN mark for magazines, and that opposer also operates a website, coupled with the fact that opposer’s famous mark is often shortened to COSMO, it is not surprising that consumers have misdirected emails to applicant. There is no indication that consumers misdirected their emails as a result of carelessness; rather we only can conclude that there is a perceived connection between opposer and applicant.⁹ Further, the record includes examples of misdirected emails that occurred as late as mid-2002.

As often stated, proof of actual confusion is not necessary to establish likelihood of confusion. *Giant Food, Inc. v. Nation’s Foodservice, Inc.*, 710 F.2d 1565, 218 USPQ 390, 396 (Fed. Cir. 1983). Even in the absence of evidence of actual confusion, we would reach the same result in this case. We find, however, that the evidence of actual confusion is probative and is indicative of a likelihood of

⁹ We do not view the emails as hearsay inasmuch as this evidence is not offered to prove the truth of the consumers’ statements therein regarding their subscriptions or views on various articles in opposer’s magazine.

confusion between the parties' marks.

Intent

Applicant asserts that he adopted his mark in good faith. Suffice it to say, lack of intent to trade on another's mark will not prevent a finding of likelihood of confusion when the involved marks are likely to cause confusion. *Greyhound Corp. v. Both Worlds Inc.*, 6 USPQ2d 1635, 1640 (TTAB 1988).

Conclusion

We find that the *du Pont* factors, on balance, weigh in favor of a finding of likelihood of confusion.

We conclude that consumers familiar with opposer's magazine sold under the mark COSMOPOLITAN, and opposer's on-line computer services featuring portions of the magazine, including entertainment news, rendered under the mark COSMOPOLITAN.COM, would be likely to believe, upon encountering applicant's mark COSMO.COM for on-line information services featuring available entertainment in various cities, that the goods and services originate from or are associated with or sponsored by the same entity.

Dilution

In view of the decision to sustain the opposition on the ground of likelihood of confusion, it is not necessary to consider opposer's dilution claim.

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Decision: The opposition is sustained on the ground of likelihood of confusion, and registration to applicant is refused.