

**THIS OPINION IS NOT A
PRECEDENT OF THE TTAB**

Mailed:
August 6, 2008

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

The Pep Boys Manny, Moe & Jack of California
v.
Kent G. Anderson

Opposition No. 91157538
Opposition No. 91157768
Opposition No. 91158277
Opposition No. 91158509
Opposition No. 91158520
Opposition No. 91158786
Opposition No. 91159159
Opposition No. 91164461
Opposition No. 91164602
Opposition No. 91165913
Opposition No. 91170501
Opposition No. 91173632

Marsha G. Gentner of Jacobson Holman, PLLC for The Pep Boys
Manny, Moe & Jack of California.

Jon A. Schiffrin of Jon A. Schiffrin, P.C. for Kent G.
Anderson.

Before Quinn, Zervas and Bergsman, Administrative Trademark
Judges.

Opinion by Bergsman, Administrative Trademark Judge:

In this consolidated opposition proceeding, The Pep
Boys Manny, Moe & Jack of California ("opposer") opposed the
registration of Kent G. Anderson's ("applicant") FUTURE
marks, identified below, on the ground of priority of use
and likelihood of confusion.

Applicant filed intent-to-use applications for the following marks:¹

Mark	Serial No.	Goods/services
FUTURE	76262483	Automobiles, trucks, sport utility vehicles, vans and structural parts therefore, in Class 12
<i>FUTURE</i> ²	76141013	Retail automobile and vehicle parts stores; on-line ordering in the field of automotive and vehicle parts; and dealerships in the field of automobiles, in Class 35; "Insurance administration in the field of . . . auto (sic)," in Class 36; Automobile service car station services; car cleaning; maintenance and repair of vehicles, in Class 37; Custom manufacturing of general product lines in the field of automobiles, and vehicle parts for others, in Class 40; and, Providing facilities for car races; organizing exhibitions in the field of auto racing; and entertainment in the field of auto racing competition, in Class 41
FUTURE	76188809	

¹ Because the descriptions of goods and services in applicant's applications are extensive, we have not reproduced the entire descriptions. We have listed only the most relevant products and services. In addition, in many cases, opposer did not oppose the registration of applicant's mark in all of the classes for which applicant sought registration.

² This is a stylized drawing of the mark. With the exception of the applications for the marks FUTURE/TOMORROW and FUTURE and design identified below, the other applications are in standard character form.

Mark	Serial No.	Goods/services
FUTURE	76247198 76235435	Wholesale and retail store services, featuring automotive parts and accessories and automobiles, in Class 35 ³
FUTURE	76299227	Tracking, locating and monitoring of vehicles; promoting and conducting trade shows in the field of automobile parts, in Class 35
FUTURE	76324919	Car stereos, in Class 9
FUTURE	76266192	Automobiles, vans, trucks, sport utility vehicles, in Class 12
FUTURE	76437630	Providing information about automobiles for sale by means of the Internet; retail services within an operating city in the field of transportation; tracking, locating, and monitoring vehicles; "automobile, vehicle retail services"; "wholesale store featuring wide variety of goods and services of others"; automobile parts accessory stores; "service gas stations"; automobile dealerships, in Class 35
FUTURE	76476242	Automobiles, trucks, vans, sport utility vehicles and structural parts therefore, in Class 12
FUTURE	76450833	Automobiles, trucks, vans, sport utility vehicles, in Class 12
FUTURE and design	76070738	Special interest clubs in the field of automobiles, in Class 41

³ As indicated in footnote No. 1, only the relevant services have been listed. With respect to the applications identified above, the entire description of services in the two applications is different, and therefore we do not have a situation where there are two applications for the same mark for the same goods and services.

Mark	Serial No.	Goods/services
<i>FUTURE/ TOMORROW</i>	76554723	Automobiles, trucks, vans, sport utility vehicles; land vehicle parts and accessories; mud flaps for vehicles and mud flap brackets as structural parts for vehicles, in Class 12

As the bases for its oppositions, opposer claims ownership of the following marks:

1. FUTURA, in typed drawing form, for "automotive accessories, namely, vehicle wheel caps and hub caps," in Class 12;⁴
2. FUTURA, in typed drawing form, for "tires," in Class 12;⁵ and,
3. CORNELL FUTURA, in typed drawing form, for "pneumatic tires for automotive vehicles," in Class 12.⁶

Because opposer's two FUTURA marks are closer to applicant's FUTURE marks than CORNELL FUTURA, we will focus our discussion on opposer's two FUTURA marks.

⁴ Registration No. 2454578, issued May 29, 2001; Sections 8 and 15 affidavits accepted and acknowledged. In the registration, opposer stated that "[t]he English translation of the word 'Futura' in the mark is 'Future'."

⁵ Registration No. 1582462, issued February 13, 1990; Sections 8 and 15 affidavits accepted and acknowledged; renewed.

⁶ Registration No. 0778767, issued October 20, 1964; Section 8 affidavit accepted; second renewal. Opposer asserts that a Section 15 affidavit has been filed and acknowledged even though it does not appear on the status and title copy of the registration filed by opposer. (Opposer's Brief, p. 5 n.3 and Exhibit A attached to the brief).

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Applicant, in its answers, denied the salient allegations in the notices of opposition.

The only evidence introduced by opposer was copies of its pleaded registrations prepared by the U.S. Patent and Trademark Office showing current status and title of the registrations. Applicant did not introduce any testimony or evidence. In this regard, we note that the assertions in opposer's brief are not evidence. *See In re Simulations Publications, Inc.*, 521 F.2d 797, 187 USPQ 147, 148 (CCPA 1975) ("There is no evidence of record showing how appellant's magazine or the reference magazine is sold. ... Accordingly, there is no evidence before this court to support appellant's arguments regarding these alleged differences between the two magazines").

Opposer filed a brief. Applicant did not file a brief.

Standing

Because opposer has properly made its pleaded registrations of record, opposer has established its standing. *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1844 (Fed. Cir. 2000); *Lipton Industries, Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185, 189 (CCPA 1982).

Priority

Because opposer's pleaded registrations are of record, Section 2(d) priority is not an issue in this case. *King*

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Candy Co. v. Eunice King's Kitchen, Inc., 496 F.2d 1400, 182 USPQ 108 (CCPA 1974).

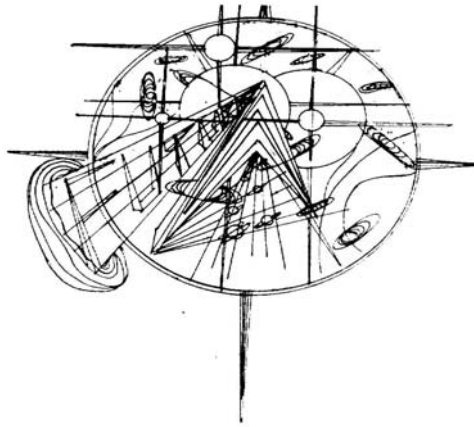
Likelihood of Confusion

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 Company, Inc.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003).

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

We turn first to the *du Pont* factor focusing on the similarity or dissimilarity of the marks in their entirety 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, any one of these means of comparison may be critical in finding the marks to be similar. *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988); *In re Lamson Oil Co.*, 6 USPQ2d 1041, 1042 (TTAB 1988).

Applicant is seeking to register the marks FUTURE, FUTURE/TOMORROW and FUTURE and design, shown below.



Opposer's mark is FUTURA.

In comparing the marks, we are mindful that 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 terms of their overall commercial impression so that confusion as to the source of the goods offered under the respective marks is likely to result. *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 USPQ 1735, 1741 (TTAB 1991), *aff'd unpublished*, No. 92-1086 (Fed. Cir. June 5, 1992). The proper focus is on the recollection of the average customer, who retains a general rather than specific impression of the marks. *Winnebago Industries, Inc. v. Oliver & Winston, Inc.*, 207 USPQ 335, 344 (TTAB 1980); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975). With these principles in mind, we analyze the marks of the parties.

1. FUTURA vs. FUTURE

FUTURA and FUTURE look alike and sound alike. Indeed, the marks are so similar that they would be perceived as having similar meanings. Moreover, we note that FUTURA means "future" in Spanish.⁷ In addition, because there is no evidence that either FUTURE, or FUTURA, have any specific meaning in connection with the goods and services of the parties and because the marks are similar in appearance, sound, and meaning, FUTURE and FUTURA engender similar commercial impressions (e.g., products of the future). In view of the foregoing, applicant's FUTURE marks are similar to opposer's FUTURA marks.

2. FUTURA vs. FUTURE/TOMORROW

We begin our analysis of these marks by noting that although likelihood of confusion must be determined by analyzing the marks in their entirety, "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 entirety." *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985). In this

⁷ Merriam-Webster's Spanish-English Dictionary at www.merriam-webster.com/spanish attached to Opposer's Brief as Exhibit B. The Board may take judicial notice of dictionary definitions, including online dictionaries that also exist in printed format. *In re Red Bull GmbH*, 78 USPQ2d 1375, 1378 (TTAB 2006). The Merriam-Webster's Spanish-English Dictionary is a readily verifiable source and widely-available in print.

regard, consumers are predisposed to focus more on the word "Future" in applicant's mark because it is the first word of the mark and because the word "Tomorrow" has a similar meaning as the word "Future." See the discussion below.

Presto Products Inc. v. Nice-Pak Products, Inc., 9 USPQ2d 1895, 1897 (TTAB 1988) ("it is often the first part of a mark which is most likely to be impressed upon the mind of a purchaser and remembered"). See also *Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin*, 396 F.3d 1369, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005) ("Veuve" is the most prominent part of the mark VEUVE CLICQUOT because "veuve" is the first word in the mark and the first word to appear on the label); *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992) (upon encountering the marks, consumers must first notice the identical lead word).

Moreover, the significance of the word "Future" in applicant's mark is reinforced by the addition of the word "Tomorrow" because "Tomorrow" has a similar meaning. The word "Future" means the following:

1. time that is to be or come hereafter.
2. something that will exist or happen in time to come.⁸

The word "Tomorrow" has the following meaning:

⁸ The Random House Dictionary of the English Language (Unabridged), p. 770 (2nd ed. 1987).

1. the day following today . . . 2. a future period or time: *the stars of tomorrow. . . .* 4. at some future time: *We shall rest easy tomorrow if we work for peace today.*⁹

Both marks mean a time in the future. Accordingly, applicant's proposed use of the word "Tomorrow" in its mark *FUTURE/TOMORROW* merely emphasizes the word "Future."

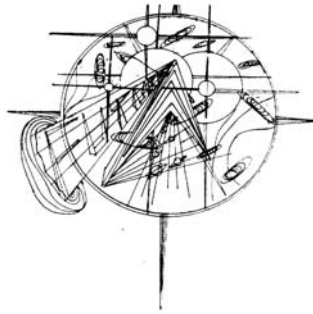
In comparing the two marks, we note that the applicant's mark, *FUTURE/TOMORROW*, contains what is essentially opposer's entire *FUTURA* mark because applicant's *FUTURE* marks would be considered equivalent to *FUTURA* given their similarity in appearance, sound, and meaning. Likelihood of confusion has been found where the entirety of one mark is incorporated within another. *Lilly Pulitzer, Inc. v. Lilli Ann Corp.*, 376 F.2d 324, 153 USPQ 406 (CCPA 1967) (THE LILLY for dresses is likely to cause confusion with LILLI ANN for dresses).

As discussed above, the words "Futura" and "Future" are similar in appearance, sound, meaning, and commercial impression. Because the word "Future" is the dominant portion of applicant's mark, it follows that applicant's mark *FUTURE/TOMORROW* is similar in appearance, sound, meaning and commercial impression with opposer's mark *FUTURA*.

⁹ The Random House Dictionary of the English Language (Unabridged), p. 1993.

3. FUTURA vs. FUTURE and design

Application Serial No. 76070738 is for the mark FUTURE and design shown below:



The word "Future" and the design elements of the mark are so merged together that they form a single and distinct mark. In fact, the word "Future" can barely be discerned and it looks like a geometric part of the design. Thus, the combination of the word "Future" and the other design elements of the mark create an indivisible mark rather than a combination of separable elements. Viewing the mark in its entirety, we find that applicant is seeking to register a unitary mark. *Dena Corp. v. Belvedere International Inc.*, 950 F.2d 1555, 21 USPQ2d 1049, 1052 (Fed. Cir. 1991).

Opposer's FUTURA marks, on the other hand, are registered in typed drawing form. This means that opposer's mark is unrestricted as to stylization and that in deciding the issue of likelihood of confusion, we must consider opposer's marks as they would appear in various common forms. *Jockey International Inc. v. Mallory & Church Corp.*, 25 USPQ2d 1233, 1235 (TTAB 1992). However, this does not

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mean that opposer's marks must be considered in all possible forms no matter how extensively stylized. Rather, when opposer's marks are registered in typed drawing form (now referred to as standard character format), this Board "must consider all reasonable manners" in which the word could be depicted. *Id.* at 1235, *citing INB National Bank v. Metrohost Inc.*, 22 USPQ2d 1585, 1588 (TTAB 1992). *See also Fossil Inc. v. Fossil Group*, 49 USPQ2d 1451, 1454 (TTAB 1998) ("opposer's typed drawing registrations of FOSSIL afford opposer a scope of protection which encompasses all reasonable manners in which the word FOSSIL could be depicted including, simply by way of examples, all lower case block letters, all upper case block letters, a mixture of lower case and upper case block letters and various script forms").

In this case, because the stylization of applicant's mark is so extreme and striking, it is entirely different in appearance from opposer's marks and it engenders a different commercial impression than opposer's marks. When viewed in its entirety, the design elements of applicant's mark render the literal portion of the mark unrecognizable or so subordinate to the overall commercial impression as to make any source association with opposer unlikely.

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

In determining whether the goods and services of the parties are related, we are mindful that there is no *per se* rule that products and services sold in the same field or industry are similar or related for purposes of likelihood of confusion. *Cooper Industries, Inc. v. Repcoparts USA, Inc.*, 218 USPQ 81, 84 (TTAB 1983) ("the mere fact that the products involved in this case (or any products with significant differences in character) are sold in the same industry does not of itself provide an adequate basis to find the required 'relatedness'"). However, likelihood of confusion may be found if the respective products and services are related in some manner and/or if the circumstances surrounding their marketing are such that they would be likely to be encountered by the same persons under conditions that could give rise to the mistaken belief that they emanate from the same source. *In re Pollio Dairy Products Corp.*, 8 USPQ2d 2012, 2015 (TTAB 1988); *Seaguard Corporation v. Seaward International, Inc.*, 223 USPQ 48, 51 (TTAB 1984).

With respect to applicant's applications for automobiles, trucks, sport utility vehicles, vans and structural parts therefore, in Class 12 (Serial Nos. 76262483, 76266192, 76476242, 76554723 and 76450833), we find that opposer's wheel caps and hub caps are parts

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closely associated with the structural parts for land vehicles, and therefore consumers may associate the source of those products with the source of the vehicles and vehicle parts. In addition to vehicles, applicant's Serial No. 76554723 also includes vehicle parts and mud flaps that are clearly similar and related to tires, wheel caps, and hub caps.

With respect to applicant's applications for retail automobile and vehicle parts stores; on-line ordering in the field of automotive and vehicle parts; and dealerships in the field of automobiles, in Class 35 (Serial Nos. 76141013 and 76188809), opposer's tires and wheel caps and hub caps are the types of products that consumers would expect to be sold in a retail automotive and vehicle parts store. Accordingly, we find that these services are related to opposer's products.

With respect to applicant's applications for "insurance administration in the field of . . . auto (sic)," in Class 36 (Serial Nos. 76141013 and 76188809), we fail to see how insurance administration services in the field of automobiles is similar or related to tires, wheel caps, or hub caps. Accordingly, we cannot find that the insurance administration services are related to opposer's products.

With respect to applicant's applications for automobile service car station services, car cleaning, and maintenance

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and repair of vehicles, in Class 37 (Serial Nos. 76141013 and 76188809), opposer's tires, wheel caps, and hub caps are the types of products that may be used in repairing and maintaining automobiles. Accordingly, we find that these services are related to opposer's products.

With respect to applicant's applications for the "custom manufacturing of general product lines in the field of automobiles, and vehicle parts for others," in Class 40 (Serial Nos. 76141013 and 76188809), the custom manufacture of vehicle parts could include wheel caps and hub caps, and therefore we find that these services are related to opposer's products.

With respect to applicant's applications for "providing facilities for car races; organizing exhibitions in the field of auto racing; and entertainment in the field of auto racing competition," in Class 41 (Serial Nos. 76141013 and 76188809), these services are specifically different from opposer's tires, wheel caps, and hub caps, and therefore we cannot find that these services and opposer's products are similar or related.

With respect to applicant's applications for "wholesale and retail store services, featuring automotive parts and accessories and automobiles," in Class 35 (Serial Nos. 76247198 and 76235435), opposer's tires and wheel caps and hub caps are the types of products that could be sold in

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such wholesale and retail stores. Accordingly, we find that these services are related to opposer's products.

With respect to applicant's application for "tracking, locating and monitoring of vehicles; promoting and conducting trade shows in the field of automobile parts," in Class 35 (Serial No. 76299227), consumers could readily associate the source of a trade show in the field of automobile parts with the source of automobile parts such as tires, wheel caps, and hub caps. Accordingly, we find that these services and opposer's products are similar or related.

With respect to applicant's application for "car stereos" (Serial No. 76324919), the goods involved are specifically different, and in the absence of proof, we cannot find that the goods of the parties are similar or related.

With respect to applicant's application for "wholesale store featuring wide variety of goods and services of others"; automobile parts accessory stores; and "service gas stations," in Class 35 (Serial No. 76437630), opposer's tires, wheel caps, and hub caps are the types of products that may be sold through an automobile parts accessory store, as well as at a "service gas station." Accordingly, these services and opposer's products are related.

With respect to applicant's application for "special interest clubs in the field of automobiles," in Class 41 (Serial No. 76070738), opposer's goods are specifically different from these services, and in the absence of proof, we cannot find that the goods and services of the parties are similar or related.

The fact that applicant's goods and/or services listed above may be only one, or a few, of the many products and services that applicant has a *bona fide* intention of selling does not diminish the relatedness of applicant's goods and services and opposer's products. *See Tuxedo Monopoly, Inc. v. General Mills Fun Group*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981) (likelihood of confusion must be found if there is likely to be confusion with respect to any item that comes within the identification of goods or services in the application).

C. Balancing the factors.

1. Opposition No. 91177538

Because the marks and goods are similar, application Serial No. 76262483 for the mark FUTURE for automobiles, trucks, sport utility vehicles, vans and structural parts therefore, in Class 12, is likely to cause confusion with opposer's mark FUTURA registered for vehicle wheel caps and hub caps.

2. Opposition No. 91157768

- a. Because the marks are similar and the goods and services are related, application Serial No. 76141013 for the mark *FUTURE* for retail automobile and vehicle parts stores; on-line ordering in the field of automotive and vehicle parts; and dealerships in the field of automobiles, in Class 35, is likely to cause with opposer's FUTURA marks registered for tires and vehicle wheel caps and hub caps.
- b. Because the goods and services are distinctly different, application Serial No. 76141013 for the mark *Future* for "insurance administration in the field of . . . auto," in Class 36, is not likely to cause confusion with opposer's FUTURA marks.
- c. Because the marks are similar and the goods and services are related, application Serial No. 76141013 for the mark *Future* for automobile service car station services; car cleaning; maintenance and repair of vehicles, in Class 37, is likely to cause confusion with opposer's FUTURA marks registered for tires and vehicle wheel caps and hub caps.

- d. Because the marks are similar and the goods and services are related, application Serial No. 76141013 for the mark *Future* for custom manufacturing of general product lines in the field of automobiles, and vehicle parts for others, in Class 40, is likely to cause confusion with opposer's FUTURA marks registered for tires and vehicle wheel caps and hub caps.
 - e. Because the goods and services are different, application Serial No. 76141013 for the mark *Future* for providing facilities for car races; organizing exhibitions in the field of auto racing; and entertainment in the field of auto racing competition, in Class 41, is not likely to cause confusion with opposer's FUTURA marks registered for tires and vehicle wheel caps and hub caps.
3. Opposition No. 91158277
- a. Because the marks are similar and the goods and services are related, application Serial No. 76188809 for the mark FUTURE for retail automobile and vehicle parts stores; on-line ordering in the field of automotive and vehicle parts; and dealerships in the field

of automobiles, in Class 35, is likely to cause confusion with opposer's FUTURA marks registered for tires and vehicle wheel caps and hub caps.

- b. Because the goods and services are entirely different, application Serial No. 76188809 for the mark FUTURE for "insurance administration in the field of . . . auto," in Class 36, is not likely to cause confusion with opposer's FUTURA marks.
- c. Because the marks are similar and the goods and services are related, application Serial No. 76188809 for the mark FUTURE for automobile service car station services; car cleaning; maintenance and repair of vehicles, in Class 37, is likely to cause confusion with opposer's FUTURA marks registered for tires and vehicle wheel caps and hub caps.
- d. Because the marks are similar and the goods and services are related, application Serial No. 76188809 for the mark FUTURE for custom manufacturing of general product lines in the field of automobiles, and vehicle parts for others, in Class 40, is likely to cause confusion with opposer's FUTURA marks

registered for tires and vehicle wheel caps and hub caps.

- e. Because the goods and services are different, application Serial No. 76188809 for the mark FUTURE for providing facilities for car races; organizing exhibitions in the field of auto racing; and entertainment in the field of auto racing competition, in Class 41, is not likely to cause confusion with opposer's FUTURA marks registered for tires and vehicle wheel caps and hub caps.

4. Opposition Nos. 91158509 and 91158520

Because the marks are similar and the goods and services are related, application Serial Nos. 76247198 and 76235435, both for the mark FUTURE for wholesale and retail store services, featuring automotive parts and accessories for automobiles, in Class 35, is likely to cause confusion with opposer's mark FUTURE registered for tires and vehicle wheel caps and hub caps.

5. Opposition No. 91158786

Because the marks are similar and the goods and services are related, application Serial No. 76299227 for the mark FUTURE for tracking, locating and monitoring of vehicles; promoting and conducting trade shows in the field of automobile parts, in Class 35, is likely to cause

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confusion with opposer's FUTURA marks registered for tires and vehicle wheel caps and hub caps.

6. Opposition No. 91159159

Because the goods are different, application Serial No. 76324919 for the mark FUTURE for car stereos is not likely to cause confusion with opposer's FUTURA marks registered for tires and vehicle wheel caps and hub caps.

7. Opposition No. 91164461

- a. Because the marks are similar and the goods are related, application Serial No. 76266192 for the mark FUTURE for automobiles, trucks, sport utility vehicles, vans and structural parts therefore, in Class 12, is likely to cause confusion with opposer's FUTURA mark registered for vehicle wheel caps and hub caps.
- b. Because the marks are similar and the goods and services are related, application Serial No. 76437630 for the mark FUTURE for "providing information about automobiles for sale by means of the Internet; retail services within an operating city in the field of transportation; tracking, locating, and monitoring vehicles; 'automobile, vehicle retail services'; 'wholesale store featuring

wide variety of goods and services of others'; automobile parts accessory stores; 'service gas stations'; automobile dealerships, in Class 35, is likely to cause confusion with opposer's mark FUTURA registered for tires and vehicle wheel caps and hub caps.

8. Opposition No. 91164602

Because the marks are similar and the goods are related, application Serial No. 76476242 for the mark FUTURE for automobiles, trucks, sport utility vehicles, vans and structural parts therefore, in Class 12, is likely to cause confusion with opposer's mark FUTURA registered for vehicle wheel caps and hub caps.

9. Opposition No. 91165913

Because the marks are similar and the goods are related, application Serial No. 76450833 for the mark FUTURE for automobiles, trucks, sport utility vehicles, vans and structural parts therefore, in Class 12, is likely to cause confusion with opposer's mark FUTURA registered for vehicle wheel caps and hub caps.

10. Opposition No. 91173632

Because the marks are similar and the goods are related, application Serial No. 76554723 for the mark *FUTURE/TOMORROW* for automobiles, trucks, sport utility

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vehicles, vans and structural parts therefore, in Class 12, is likely to cause confusion with opposer's mark FUTURA registered for vehicle wheel caps and hub caps.

11. Opposition No. 91170501

Because the marks are not similar and the goods and services are not related, application Serial No. 76070738 for the mark FUTURE and design for "special interest clubs in the field of automobiles," in Class 41 is not likely to cause confusion with opposer's FUTURA marks registered for tires and vehicle wheel caps and hub caps.

Because we have made our findings with respect to opposer's two FUTURA registrations (Registration Nos. 1582462 and 2454578), we need not decide the issue of likelihood of confusion with respect to opposer's registration for the mark CORNELL FUTURA (Registration No. 0778767) because, to the extent that we have determined that there is no confusion, the addition of the term CORNELL would further distinguish the marks. On the other hand, if we have determined that there is confusion, there is no reason to determine whether there is confusion with another less similar mark.

Decision:

1. Opposition No. 91157538 against application Serial No. 76262483 is sustained and registration to applicant is refused.

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2. Opposition No. 91157768 against application Serial No. 76141013 in Classes 35, 37, and 40 is sustained and registration is refused. However, with respect to Classes 36 and 41, the opposition is dismissed. Accordingly, the application will be forwarded to the publication and issue section of the Office for the issuance of a notice of allowance in Classes 16, 36, 38, 39, 41 and 42.¹⁰

3. Opposition No. 91158277 against application Serial No. 76188809 in Classes 35, 37, and 40 is sustained. However, with respect to Classes 36 and 41, the opposition is dismissed. Accordingly, the application will be forwarded to the publication and issue section of the Office for the issuance of a notice of allowance in Classes 16, 36, 38, 39, 41 and 42.¹¹

4. Opposition No. 91158509 against application Serial No. 76247198 is sustained and registration to applicant is refused.

¹⁰ Applicant sought to register application Serial No. 76141013 for goods and services in Classes 16, 35, 36, 37, 38, 39, 40, 41, and 42. However, opposer filed its notice of opposition against the registration of applicant's mark for goods only in Classes 35, 36, 37, 40, and 41.

¹¹ Applicant sought to register application Serial No. 76188809 for goods and services in Classes 16, 35, 36, 37, 38, 39, 40, 41, and 42. However, opposer filed its notice of opposition against the registration of applicant's mark for services only in Classes 35, 36, 37, 40, and 41.

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5. Opposition No. 91158520 against application Serial No. 76235435 is sustained and registration to applicant is refused.

6. Opposition No. 91158786 against application Serial No. 76299227 is sustained and registration to applicant is refused.

7. Opposition No. 91159159 against application Serial No. 76324919 in Class 9 is dismissed. Accordingly, the application will be forwarded to the publication and issue section of the Office for the issuance of a notice of allowance in Classes 9 and 13.¹²

8. Opposition No. 91164461 against application Serial Nos. 76266192 and 76437630 is sustained and registration of both applications is refused.

9. Opposition No. 91164602 against application Serial No. 76476242 is sustained and registration to applicant is refused.

10. Opposition No. 91165913 against application Serial No. 76450833 is sustained and registration to applicant is refused.

¹² Applicant sought to register application Serial No. 7624919 for goods in Classes 9 and 13. However, opposer filed its notice of opposition against the registration of applicant's mark for goods only in Class 9.

Opposition No. 91157538 *et. al.*

11. Opposition No. 91173632 against application Serial No. 76554723 in Class 12 is sustained and registration to applicant is refused. However, the application will be forwarded to the publication and issue section of the Office for the issuance of a notice of allowance in Classes 42 and 43.¹³

12. Opposition No. 91170501 against application Serial No. 76070738 is dismissed. The application will be forwarded to the publication and issue section of the Office for the issuance of a notice of allowance.

¹³ Applicant sought to register application Serial No. 76554723 for goods and services in Classes 12, 42, and 43. However, opposer filed its notice of opposition against the registration of applicant's mark for goods only in Class 12.