

THIS OPINION IS NOT A  
PRECEDENT OF THE TTAB

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

DUNN  
Mailed: March 7, 2007

Opposition No. 91164083

INSPIRATION SOFTWARE, INC.

v.

TEACHER INSPIRED PRACTICAL  
STUFF, INC.

Before Hohein, Grendel, and Kuhlke, Administrative Trademark  
Judges.

By the Board:

On August 21, 2003, Teacher Inspired Practical Stuff, Inc. filed an application to register the mark T.I.P.S. - TEACHER INSPIRED PRACTICAL STUFF for "printed course materials, books, lesson plans, theme units and curriculum support materials, all featuring academic subjects, for the education of elementary school students" and "educational services, namely, providing learning centers featuring instruction in academic courses for elementary school students" on the basis of applicant's allegations of a bona fide intent to use the mark in commerce (application Serial No. 76541630).

**Opposition No. 91164083**

On January 25, 2005, Inspiration Software, Inc. filed a notice of opposition based on the claim that applicant's mark so resembles opposer's previously registered INSPIRATION mark for "computer programs in the field of idea development through visual diagramming, outlining and text creation" (Registration No. 1768514) and "computer education training" (Registration No. 1864117) as to be likely to cause confusion.

After the Board granted extensions of time in which to respond to the notice of opposition, on May 24, 2005, applicant filed a motion to dismiss the notice of opposition for failure to state a claim and a TTABVUE listing of the other Board proceedings in which opposer is plaintiff. Because applicant submitted matters outside the pleadings, and because applicant's motion to dismiss did not raise an issue regarding the sufficiency of the pleadings but the issue of whether opposer can prevail on the merits of the opposition, the Board informed the parties that the motion would be treated as a motion for summary judgment. The Board's order crossed in the mail with opposer's response to the motion to dismiss. Thereafter, applicant supplemented its motion for summary judgment, and submitted a more recent TTABVUE listing of the proceedings before the Board in which opposer is plaintiff and the April 11, 2006 declaration of applicant's President, Maria Camito-Proto, averring that the

differences between the marks are such that prospective purchasers are not likely to be confused. Opposer filed a response opposing entry of summary judgment, and applicant filed a reply.

By its motion, applicant seeks judgment as a matter of law because no genuine issues of material fact exist as to likelihood of confusion because the marks T.I.P.S. - TEACHER INSPIRED PRACTICAL STUFF and INSPIRATION are completely distinct in sound, appearance, connotation, and commercial impression, and the dissimilarity of the marks so outweighs the other *duPont* factors<sup>1</sup> that only this factor need be considered.

In opposition to entry of summary judgment, opposer contends that the marks are similar, that its goods are sold in the education market, which includes grades K-12, college, adult education, and corporate training; that applicant's identification of goods is broad enough that the goods of the two parties could be subject to the same marketing to prospective purchasers; and that opposer's INSPIRATION mark is famous within its industry.<sup>2</sup>

---

<sup>1</sup> See *In re E. I. duPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973).

<sup>2</sup> Opposer also argues in its response that it has prior rights in the term INSPIRED based on its ownership of application Serial No. 76075247. Because these prior rights in a different mark were not pleaded in the notice of opposition, this argument will not be addressed. The Board notes that the application was abandoned December 21, 2005 for failure to file a Statement of Use.

**Opposition No. 91164083**

In a motion for summary judgment, the moving party has the burden of establishing the absence of any genuine issues of material fact and that it is entitled to judgment as a matter of law. See Fed. R. Civ. P. 56(c). A genuine dispute with respect to a material fact exists if sufficient evidence is presented that a reasonable fact finder could decide the question in favor of the non-moving party. See *Opryland USA Inc. v. Great American Music Show, Inc.*, 970 F.2d 847, 23 USPQ2d 1471 (Fed. Cir. 1992). Thus, all doubts as to whether any factual issues are genuinely in dispute must be resolved against the moving party and all inferences must be viewed in the light most favorable to the non-moving party. See *Olde Tyme Foods Inc. v. Roundy's Inc.*, 961 F.2d 200, 22 USPQ2d 1542 (Fed. Cir. 1992).

We find that applicant has adequately met its burden in establishing the absence of any genuine issues of material fact. We believe that the circumstances here are similar to those in *Kellogg Co. v. Pack'em Enterprises, Inc.*, 14 USPQ2d 1545 (TTAB 1990), *aff'd*, 951 F.2d 330, 21 USPQ2d 1142 (Fed. Cir. 1991), in that the single *duPont* factor of the dissimilarity of the marks in their entireties substantially outweighs any other relevant factors and is dispositive of the issue of likelihood of confusion. For the purposes of this motion, the Board has considered the other relevant *duPont* factors, such as the relationship between the goods

**Opposition No. 91164083**

and the fame of opposer's mark, in opposer's favor. Even viewing all other relevant *duPont* factors in opposer's favor, we find the dissimilarities of the marks so great as to avoid likelihood of confusion.

Applicant's mark T.I.P.S. - TEACHER INSPIRED PRACTICAL STUFF has thirty three letters and creates a markedly different visual appearance than the eleven letters of opposer's mark INSPIRATION. In addition to the different number of letters in the parties' respective marks, there are no common words to draw the eye and minimize that difference. The common root term, the six letters INSPIR, is only half of opposer's mark and less than a fifth of applicant's mark. The common root term does not create any visual identity inasmuch as it is the root of different words, namely the adjective INSPIRED in applicant's mark and the noun INSPIRATION in opposer's mark. The placement of the common root term INSPIR in the parties' respective marks also de-emphasizes the similarity because it appears in the beginning of opposer's mark but is in the middle of applicant's mark. Finally, the punctuation which appears in applicant's acronym T.I.P.S. lends a visual distinction to that term which is absent from opposer's mark. For these reasons, we find that applicant's mark T.I.P.S. - TEACHER INSPIRED PRACTICAL STUFF has a different appearance than opposer's mark INSPIRATION.

**Opposition No. 91164083**

Apart from the visual difference, the marks T.I.P.S. - TEACHER INSPIRED PRACTICAL STUFF and INSPIRATION do not sound alike.<sup>3</sup> Applicant's mark comprises a four letter acronym followed by four explanatory words. The acronym T.I.P.S. which appears first in applicant's mark would be pronounced first and sounds nothing like the term INSPIRATION which is opposer's entire mark. The alliteration between T.I.P.S. and the following word TEACHER not only indicates that the first term in applicant's mark is an acronym but brings emphasis to the term TEACHER in the mark, which also sounds nothing like INSPIRATION. The common root letters INSPIR are pronounced differently in the two marks inasmuch as the adjective INSPIRED in applicant's mark emphasizes the second syllable and the noun INSPIRATION in opposer's mark emphasizes the third syllable. As a

---

<sup>3</sup> inspired

SYLLABICATION: in·spired

PRONUNCIATION: n-sprd

ADJECTIVE: Of such surpassing brilliance or excellence as to suggest divine inspiration: an inspired musician; an inspired performance.

inspiration

SYLLABICATION: in·spi·ra·tion

PRONUNCIATION: nsp-rshn

NOUN: 1a. Stimulation of the mind or emotions to a high level of feeling or activity. b. The condition of being so stimulated. 2. An agency, such as a person or work of art, that moves the intellect or emotions or prompts action or invention. 3. Something, such as a sudden creative act or idea, that is inspired. 4. The quality of inspiring or exalting: a painting full of inspiration. 5. Divine guidance or influence exerted directly on the mind and soul of humankind. 6. The act of drawing in, especially the inhalation of air into the lungs.

*The American Heritage® Dictionary of the English Language (4th Ed. 2000).*

**Opposition No. 91164083**

result, we find that applicant's mark T.I.P.S. - TEACHER INSPIRED PRACTICAL STUFF has a different sound than opposer's mark INSPIRATION.

In addition to the visual and aural differences, the marks T.I.P.S. - TEACHER INSPIRED PRACTICAL STUFF and INSPIRATION do not share the same connotation. The term INSPIRATION is the whole of opposer's mark and designates, as noted above, mental or emotional stimulation to a high level. The term INSPIRED modifies the term TEACHER in applicant's mark, the phrase TEACHER INSPIRED and the word PRACTICAL modify the term STUFF, and the four word phrase TEACHER INSPIRED PRACTICAL STUFF explains the beginning acronym T.I.P.S. As a whole applicant's mark connotes tips dependent on stuff found practical by teachers.

We find that the marks INSPIRATION and T.I.P.S. - TEACHER INSPIRED PRACTICAL STUFF, considered in their entirety, are dissimilar in appearance, sound, and connotation, and create utterly dissimilar commercial impressions. See *Champagne Louis Roederer, S.A. v. Delicato Vineyards*, 148 F.3d 1373, 47 USPQ2d 1459 (Fed. Cir. 1998) (court affirms Board dismissal of opposition based on dissimilarity of the marks CRISTAL and CRYSTAL CREEK); *Kellogg Co. v. Pack'em Enterprises, Inc.*, *supra* (court affirms Board dismissal of opposition based on dissimilarity of the marks FROOTEE ICE and elephant design and FRUIT

**Opposition No. 91164083**

LOOPS); *Keebler Co. v. Murray Bakery Products*, 866 F.2d 1386, 9 USPQ2d 1736 (Fed. Cir. 1989) (court affirms Board dismissal of opposition based on dissimilarity of the marks PECAN SANDIES and PECAN SHORTEES). See also *Missiontrek Ltd. Co. v. Onfolio, Inc.*, 80 USPQ2d 1381 (TTAB 2005) (dissimilarity of the marks ONFOLIO and design and CARTAGIO dispositive) and *Sears Mortgage Corp. v. Northeast Savings F.A.*, 24 USPQ2d 1227 (TTAB 1992) (dissimilarity between the marks APPROVAL PLUS and APPROVALFIRST dispositive).

Accordingly, applicant's motion for summary judgment is granted, and the opposition is dismissed with prejudice.

\*\*\*